Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 76-5729

MARK DAVID OLIPHANT AND DANIEL B. BELGARDE,
PETITIONERS,

v.

THE SUQUAMISH INDIAN TRIBE, ET AL,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 22, 1976

CERTIORARI GRANTED JUNE 13, 1977

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RELEVANT DOCKET ENTRIES
MARK DAVID OLIPHANT, PETITIONER

Date	Proceedings
1973	
1. Aug. 23	Petition for Writ of Habeas Corpus filed in U.S. District Court for Western District of Washington at Seattle *(Oliphant, Petitioner v. Edward Schlie, Chief of Police of City of Bremerton, Respondent)* Cause No. 511–73C2
2. Aug. 23	Exhibit I of Petition for Writ of Habeas Corpus: Order of Commitment, dated August 19, 1973 by the Suquamish Provisional Court on the Port Madison Indian Reservation *(The Suquamish Indian Tribe, Plaintiff vs. Mark David Oliphant, Defendant)*
3. Aug. 23	Order to Show Cause And Setting Hearing.
4. Sept. 7	Return to Writ Alleging Custody Under Process and Agreement by Edward Schlie, Chief of Police of the City of Bremerton
5. Sept. 7	Annexed Copy of Agreement to Above Return dated June 7, 1973, between City of Bremerton, State of Washington and U.S. Bureau of Indian Affairs for custody of "Indian prisoners"
6. Sept. 7	Annexed Copy of Order of Commitment to above Return dated August 19, 1973 by the Suquamish Provisional Court on the Port Madision Indian Reservation *(Suquamish Indian Tribe, Plaintiff vs. Mark David Oliphant, Defendant)*, Same as 2. hereof
7. Sept. 7	Annexed Copy of Order Releasing Defendant On Personal Recognizance to above Return, dated August 24, 1973 by

	the Suquamish Provisional Court o. the Port Madison Indian Reservation *(Suquamish Indian Tribe, Plaintiff vs. Mark David Oliphant, Defendant)*
8. Sept. 10	Memorandum of Authorities of Amicus Curiae by Suquamish Indian Tribe, et al
9. Sept. 11	Supplement to Petition for Writ of Habeas Corpus naming as Additional Respondents the Suquamish Indian Tribe, et al
10. Sept. 11	Exhibit II to Supplement to Petition for Writ of Habeas Corpus: Agreement of Defendant to Appear for Trial, dated August 24, 1973 by the Suquamish Provisional Court on the Port Madison Indian Reservation *(Suquamish Indian Tribe, Plaintiff vs. Mark David Oliphant, Defendant)*
11. Sept. 11	Exhibit III to Supplement to Petition for Writ of Habeas Corpus: Order Releasing Defendant on Personal Recognizance, dated August 24, 1973, by the Suquamish Provisional Court on the Port Madison Indian Reservation *(Suquamish Indian Tribe, Plaintiff vs. Mark David Oliphant, Defendant)*, Same as 7. hereof
12. Sept. 11	Exhibit IV to Supplement to Petition for Writ of Habeas Corpus with Exhibit I thereof; Copy of Petition for Writ of Habeas Corpus and Exhibit I, Order of Commitment, same as 1. and 2. hereof
13. Sept. 25	Order to Show Cause and Setting Hearing
14. Oct. 26	United States Memorandum of Amicus Curiae
15. Oct. 26	Exhibit 9 to United States Memorandum of Amicus Curiae: The Suquamish Provisional Court on the Port Madison Indian Reservation, Complaint,

	(Suquamish Indian Tribe, Plaintiff vs. Mark David Oliphant, Defendant), for violation of offense of Section 6, Chapter 3 of Suquamish Indian Tribal Law and Order Code
16. Oct. 26	Exhibit 9 to Untied States Memorandum of Amicus Curiae: The Suquamish Provisional Court on the Port Madison Indian Reservation, Complaint, *(Suquamish Indian Tribe, Plaintiff vs. Mark David Oliphant, Defendant)*, for violation of offense of Section 62, Chapter 3 of Suquamish Indian Tribal Law and Order Code
1974	
17. Jan. 14	Additional Memorandum of Authorities of Additional Respondents, with Exhibits
18. Jan. 25	Verification of Richard Belmont, Jr., verifying for additional Respondents matters set forth in 8. and 17. hereof
19. Jan. 25	Affidavit of John B. Benedetto, verifying for additional Respondents documents and instruments comprising Exhibits 1 and 2 of 17. hereof
20. Jan. 25	Exhibit D to Petitioner's Reply Memorandum; Affidavit of Martha F. George
21. Jan. 25	Exhibit E to Petitioner's Reply Memorandum; Affidavit of Robert J. Smiley
22. April 5	Memorandum Opinion of U.S. District Judge Morill E. Sharp
23. April 5	U.S. District Court Judgment
24. April 30	Notice of Appeal
1976	
25. Aug. 24	Opinion, U.S. Court of Appeals for the Ninth Circuit, Cause No. 74–2154
26. Nov. 22	In The Supreme Court of the United States, Petition for A Writ of Certiorari

to the United States Court of Appeals for the Ninth Circuit *(Mark David Oliphant and Daniel B. Belgarde, Petitioners v. The Suquamish Indian Tribe, et al, Respondents)* No. 76–5729

1977

27. June 13 — United States Supreme Court, Order Granting Writ of Certiorari and Leave to Proceed in Forma Pauperis *(Mark David Oliphant and Daniel B. Belgarde, Petitioners v. The Suquamish Indian Tribe, et al, Respondents)* No. 76–5729

RELEVANT DOCKET ENTRIES
DANIEL B. BELGARDE, PETITIONER

1974

28. Nov. 6 — Petition for Writ of Habeas Corpus, United States District Court, Western District of Washington at Seattle *(Daniel B. Belgarde, Petitioner vs. Suquamish Indian Tribe, et al, Respondents,)* Cause No. C74–683S

29. Nov. 6 — Exhibit 1 to Petition for Writ of Habeas Corpus; Map of Port Madison Indian Reservation.

30. Nov. 6 — Exhibit 2 to Petition for Writ of Habeas Corpus; Affidavit of Martha F. George, Same as 20. hereof

31. Nov. 6 — Exhibit 3 of Petition for Writ of Habeas Corpus; Affidavit of Robert J. Smiley, Same as 21. hereof

32. Nov. 6 — Exhibit 4 of Petition for Writ of Habeas Corpus; Suquamish Tribal Court of the Port Madison Indian Reservation; Temporary Order of Commitment dated October 12, 1974 *(Suquamish Indian Tribe, Plaintiff vs. Daniel B. Belgarde, Defendant)*; Violation of Section 44, Chapter III of the Suquamish Tribal Law and Order Code

33. Nov. 6 — Exhibit 5 of Petition for Writ of Habeas Corpus; Suquamish Tribal Court of the Port Madison Indian Reservation; Temporary Order of Commitment dated October 12, 1974 *(Suquamish Indian Tribe, Plaintiff vs. Daniel B. Belgarde, Defendant)*; Violation of Section 59, Chapter III of the Suquamish Tribal Law and Order Code

34. Nov. 6 — Exhibit 6 of Petition for Writ of Habeas Corpus; Agreement between City of Port Angeles and United States Bureau of Indian Affairs dated April 15, 1974

35. Nov. 6 — Exhibit 7 of Petition for Writ of Habeas Corpus; Proclamation by Governor Daniel J. Evans, Governor of Washington dated August 26, 1971

36. Nov. 12 — Order of U.S. District Court Referring Case to U.S. Magistrate

37. Dec. 13 — Order to Show Cause Pursuant to Order to Show Cause

1975

38. Jan. 31 — Return of Suquamish Respondents on Petition for Writ of Habeas Corpus

39. Jan. 31 — Exhibit A to Return: Bureau of Indian Affairs Incident Complaint Reports.

40. Jan. 31 — Exhibit B–1 and B–2 to Return: Affidavit of Charles Deam

41. Jan. 31 — Exhibit B–3 to Return: Indian Children School Census

42. Jan. 31 — Exhibit C to Return: Memorandum Opinion, United States District Court *(Mark David Oliphant, Petitioner vs. Suquamish Indian Tribe, et al, Respondents)*, Same as 22. hereof

43. Jan. 31 — Exhibit D to Return: Notice of Acceptance of Retrocession of Jurisdiction dated April 5, 1972 by United States Secretary of the Interior; Harrison Loesch, Assistant Secretary of the Interior, Federal Register, Vol. 37, No. 72, April 13, 1972

44. Jan. 31 — Exhibit E–1 to Return: Letter from Regional Solicitor to Barry D. Ernstoff dated January 27, 1975

45. Jan. 31 — Exhibit E–2, E–3, E–4 and E–5 to Return: Title Status Report, United States Bureau of Indian Affairs

46. Feb. 5 — Order Setting Hearing

47. Aug. 1 — Report and Recommendation of United States Magistrate

48. Aug. 18 — Order Denying Writ of Habeas Corpus

49. Aug. 22 — Judgment denying Writ of Habeas Corpus

50. Sept. 4 — Notice of Appeal

51. — Stipulation for Order Holding Appeal in Abeyance filed in United States Court of Appeals, Ninth Circuit, dated November 14, 1975

1976

52. Jan. 5 — Order of United States Court of Appeals, Ninth Circuit holding appeal in abeyance pending Court's decision in *Oliphant vs. Schlie*, Court of Appeals Cause No. 74–2154

53. Nov. 22 — In the Supreme Court of the United States, Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit *(Mark David Oliphant and Daniel B. Belgarde, Petitioners v. The Suquamish Indian Tribe, et al, Respondents)* No. 76–5729

1977

54. June 13 — United States Supreme Court, Order Granting Writ of Certiorari and Leave to Proceed in Forma Pauperis *(Mark David Oliphant and Daniel B. Belgarde, Petitioners v. The Suquamish Indian Tribe et al, Respondents)* No. 76–5729, Same as 27. hereof

DISTRICT COURT—PETITION FOR WRIT OF HABEAS CORPUS

File Aug. 23, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
DIVISION NO. 1

MARK DAVID OLIPHANT,
Petitioner,

EDWARD SCHLIE, CHIEF OF POLICE OF THE CITY OF BREMERTON
Respondent.

NO. 511-73C2

PETITION FOR WRIT OF HABEUS CORPUS

TO: THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON:
The petition of JOHN F. RAYMOND respectfully shows:

I.

That MARK DAVID OLIPHANT is now imprisoned and restrained of his liberty by EDWARD SCHLIE, CHIEF OF POLICE OF THE CITY OF BREMERTON in the CITY OF BREMERTON JAIL, BREMERTON, KITSAP COUNTY, WASHINGTON.

II.

That David Mark Oliphant is a non-Indian residing in Kitsap County, Washington.

III.

That the Suquamish Indian Tribe is an Indian Tribe in accordance with the laws of the United States and that its tribal officers purport to have sovereign police power over the persons of non-Indians entering boundaries which they claim are within the PORT MADISON INDIAN RESERVATION.

IV.

That on or about Sunday on the 19th day of August, 1973, at approximately 4:20 o'clock A.M., Mark David Oliphant was seized without his consent and taken under custody by two individuals who were purporting to act as deputy police of the Suquamish Indian Tribe for land owned by the Suquamish Indian Tribe and subject to the trust status of the United States, in Suquamish, Kitsap County, Washington. That he was then forced to walk from that location along a public highway of the State of Washington to the tribal office of the Suquamish Indian Tribe in Suquamish, Kitsap County, Washington, where he was imprisoned against his will by officers purporting to act for, and with the authority of the Suquamish Indian Tribe. He then remained imprisoned in a locked room without food, heat, bed, or toilet facilities, for a period of approximately six (6) hours or more, when he was then forced to appear before two persons claiming to act as judges with judicial power over his person to hear an arraignment on the false arrest previously stated.

On August 19, 1973 he was charged with "assault and battery" before the "Suquamish Tribal Court" without due process of law, and contrary to the laws and constitution of the United States; and an "Order of Commitment" was signed by Grace Duggan, "Judge, Suquamish Tribal Court" and Cecelia M. Hawk, "Judge, Suquamish Tribal Court". A copy of the "Order of Commitment" is attached and made a part hereof as Exhibit I. At the time of his presentment before said Court and during the hearing thereof, no presentation was made by either of the "officers" or other "witnesses" of the incident for which his "arrest" and incarceration was made. The petitioner knows of no laws applicable to the person of the prisoner, Mark David Oliphant, by the Suquamish Indian Tribe or the Suquamish Tribal Court and of no Court of justice therefrom to which he can appeal.

V.

That following the execution by Judge Grace Duggan and Judge Cecelia Hawk, he was handcuffed and taken into custody in an automobile supplied and/or furnished by the United States Government, Bureau of Indian Affairs,

to the Suquamish Indian Tribe, by a tribal officer. He was then transported and committed to the City Jail of Bremerton, Washington, where he now remains unlawfully incarcerated.

VI.

That said restraint, arrest and imprisonment of Mark David Oliphant were false and illegal by said persons and without authority over the person of Mark David Oliphant, a non-Indian, and contrary to all due process of law.

VII.

That no previous application has been made for the writ prayed for below. The petitioner has made this petition as an attorney for Mark David Oliphant, and upon his information and belief from an interview with the prisoner and an investigation of matters herein contained.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue, directed to the said respondent, Edward Schlie, commanding him to forthwith release the body of Mark David Oliphant from custody to the personal recognizance of his attorney, John F. Raymond, to await hearing on this matter, and that the respondent, Edward Schlie, be commanded to appear and show cause for such imprisonment and detention before the Court granting said writ and why it should not remain absolute.

DATED: The 22nd day of August, 1973.

PETITIONER:

by: _____
JOHN F. RAYMOND
Attorney for Petitioner

(JURAT OMITTED IN PRINTING)

DISTRICT COURT—EXHIBIT I OF PETITION FOR WRIT OF HABEAS CORPUS ORDER OF COMMITMENT

Filed Aug. 23, 1973

IN THE SUQUAMISH PROVISIONAL COURT ON THE PORT MADISON INDIAN RESERVATION

THE SUQUAMISH INDIAN TRIBE,
Plaintiff,

vs.

MARK DAVID OLIPHANT,
Defendant.

ORDER OF COMMITMENT

On the 19th day of August, 1973, the defendant above named, by reason of disposition of this matter has been this date sentenced and/or fined as follows:

Confined to Bremerton City Jail until date of trial, August 27, 1973 at 7:30PM or until bond is posted. Bond will be $100.00 in each charge:

Bond: $100.00 bond for assault and battery;

$100.00 for resisting lawful arrest.

The defendant is hereby remanded to the custody of the Suquamish Tribal Police in accordance with the commitment order above set forth.

Dated: 19th day of August, 1973.

/s/GRACE DUGGAN, JUDGE
SUQUAMISH TRIBAL COURT
/s/CECELIA M. HAWK, JUDGE
SUQUAMISH TRIBAL COURT

DISTRICT COURT—RETURN TO WRIT ALLEGING CUSTODY UNDER PROCESS AND AGREEMENT BY EDWARD SCHLIE, CHIEF OF POLICE OF THE CITY OF BREMERTON

Filed Sept. 7, 1973

(Caption Omitted in Printing)

To the Honorable Morill E. Sharp, Judge for United States District Court, Western District of Washington at Seattle:

I hereby certify and return that before the coming to me of the annexed order to show cause the said Mark David Oliphant was committed to my custody, and was detained by me until August 24, 1973, by virtue of an order of commitment out of the Suquamish Provisional Court on the Port Madison Indian Reservation of Kitsap County, State of Washington, and by the indorsements made upon said order of commitment and by virtue of an agreement with the United States Bureau of Indian Affairs. A copy of said order of commitment and agreement are annexed hereto and made a part of this return. Said Mark David Oliphant was released on his personal recognizance of August 24, 1973, pursuant to an order from the Suquamish Provisional Court and the indorsement thereon of which a copy of said order is annexed hereto and made a part of this return.

DATED this 7th day of Sept., 1973.

/s/ _____
Edward Schlie, Chief of Police
of the City of Bremerton

DISTRICT COURT—ANNEXED COPY OF AGREEMENT TO RETURN OF WRIT DATED JUNE 7, 1973, BETWEEN CITY OF BREMERTON, STATE OF WASHINGTON AND U.S. BUREAU OF INDIAN AFFAIRS FOR CUSTODY OF "INDIAN PRISONERS"

Filed Sept. 7, 1973

(Caption Omitted in Printing)

United States Department of the Interior
Bureau of Indian Affairs
Portland Area Office
Post Office Box 3785
Portland, Oregon 97208

A G R E E M E N T

THIS AGREEMENT MADE AND ENTERED INTO THIS 7th day of June, 1973, by and between the City of Bremerton, State of Washington, through its duly authorized Commissioners, hereinafter referred to as the Party of the First Part, and the Bureau of Indian Affairs, through its Contracting Officer, hereinafter referred to as the Party of the Second Part, NOW THEREFORE

WITNESSETH, That the Party of the First Part shall care for Indian prisoners placed in the custody of its officers and for and in consideration of this service (which shall include room and board) the Party of the Second Part will make payment to the Party of the First Part at the rate of $5.00 per day for the period beginning July 1, 1973 and ending June 30, 1974.

IT IS UNDERSTOOD AND AGREED That Indian prisoners who have not served their full time will not be released except upon written orders of the Suquamish and Port Gamble Tribal Courts and its officers.

IT IS UNDERSTOOD AND AGREED That prisoners committed to the City of Bremerton Jail will be subject to the same rules and regulations required of other prisoners to observe in said jail.

IT IS UNDERSTOOD AND AGREED That payment will be made for this service at the end of each month upon presentation by the Party of the First Part of a proper invoice to the Bureau of Indian Affairs, Western Washington Agency, 3006 Colby Avenue, Federal Building, Everett, WA 98201.

IT IS FURTHER UNDERSTOOD AND AGREED That this arrangement shall be for the above period with the option to renew subject to availability of funds. This agreement may be terminated by either party upon thirty (30) days written notice to the other. This Agreement may be modified in writing upon mutual consent of both to the contract.

THIS AGREEMENT Is subject to the attached General Provisions.

IN WITNESS HEREOF Both parties have hereunder set their hands as shown below.

THE UNITED STATES OF AMERICA BUREAU OF INDIAN AFFAIRS	Bremerton Police Dept. (Organization)
/s/ (Signature)	/s/ (Signature)
E. La Coursa Name (type or print)	R. Wes Henry Name (type or print)
Area Property & Supply Officer (Title)	Acting Chief of Police (Title)
July 7, 1973 (Date)	July 17, 1973 (Date)

DISTRICT COURT—ANNEXED COPY OF ORDER RELEASING DEFENDANT ON PERSONAL RECOGNIZANCE TO RETURN OF WRIT DATED AUGUST 24, 1973

Filed Sept. 7, 1973

IN THE SUQUAMISH PROVISIONAL COURT ON THE PORT MADISON INDIAN RESERVATION

SUQUAMISH TRIBE,
Plaintiff,
v.
MARK OLIPHANT,
Defendant.

NO. 1973–4

ORDER RELEASING DEFENDANT ON PERSONAL RECOGNIZANCE

It appearing to the court that the Defendant agrees to appear for his trial on September 25, 1973 at 6:00 p.m. and that defendant has family ties in the Community of Suquamish on the Port Madison Indian Reservation; it is hereby ordered that defendant is released on his own personal recognizance until the time and date of trial set out above. Place of court will be the Suquamish Tribal Business Office in downtown Suquamish, Washington.

If defendant fails to appear at his trial, a warrant for his arrest will be issued.

Dated this 24th day of August, 1973.

Cecelia Hawk, Judge
Suquamish Tribal Court

DISTRICT COURT—MEMORANDUM OF AUTHORITIES OF AMICUS CURIAE BY SUQUAMISH INDIAN TRIBE

Filed Sept. 10, 1973

(Caption Omitted in Printing)

This is a Habeas Corpus action brought by the defendant in a criminal case before the Suquamish Indian Tribal Court against the Chief of Police of the City of Bremerton who was holding the petitioner in custody by order of the Suquamish Tribal Court and pursuant to an agreement entered into with the City of Bremerton on June 7, 1972. Petitioner in this case was placed under arrest for assaulting a tribal police officer and resisting arrest when the tribal deputies attempted to break up a fight on the Suquamish Tribal Camp Grounds on the Port Madison Indian Reservation.

1. *An Indian Tribe Has the Inherent Sovereign Power to Administer Justice on its Reservation.*

Prerequisite to a proper determination of this case is a preliminary consideration of the basic nature of the Suquamish Indian Tribe as a political entity. The original sovereign status of Indian tribes is explicated at length in *Federal Indian Law*, 1958 (1966 Printing by Assoc. on American Indian Affairs, Inc., N.Y.):

> "Indian self-government includes generally the power of an Indian tribe, to the extent that it has not been limited by Federal law, to adopt and operate under a form of government of the Indians' choosing, to define conditions of tribal membership, to regulate domestic relations of members, to prescribe rules of inheritance, to levy taxes, to regulate property within the jurisdiction of the tribe, to control the conduct of members by municipal legislation, and to administer justice. Originally, those powers which were exercised by an Indian tribe were not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited dependent sovereignty which had not been extinguished by Federal action. Each Indian tribe began its relationship with the Federal government as a sovereign or quasi-sovereign government, recognized as such by treaty and in legislation. These powers of sovereignty have been limited from time to time by special treaty provisions and laws designed to take from the Indian tribes control of matters which, in the judgment

> of Congress, should be exercised elsewhere." *Federal Indian Law* at 395.

In a discussion of case law regarding the recognition of the sovereign rights of an Indian tribe, it is stated further:

> "The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles: (1) An Indian tribe possessed, in the first instance, all the powers of any sovereign State. (2) Conquest rendered the tribe subject to the legislative power of the United States and, in substance, terminated the external powers of sovereignty of the tribe, e.g., its power to enter into treaties with foreign nations, but did not by itself terminate the internal sovereignty of the tribe, i.e., its powers of local self-government. (3) These internal powers were, of course, subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, many powers of internal sovereignty have remained in the Indian tribes and in their duly constituted organs of government." *Federal Indian Law* at 398.

These concepts of sovereignty were recognized in a case which was the foundation for the development of basic principles of Indian law in the United States, *Worcester v. Georgia*, 31 U.S. 515 (1833). Chief Justice Marshall, writing for the Supreme Court stated:

> "The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistable power. . . ." 31 U.S. at 559. See also, *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831).

For a number of years many of these inherent sovereign powers of Indian tribes were not exercised as the United States government began to take a firm grasp of the administration of Indian affairs. In 1934 the Indian Reorganization Act was passed (48 Stat. 984) which attempted to revitalize the self-government of Indian tribes. In an opinion as to what powers had been vested in an Indian tribe by existing law, the Solicitor of the Department of Interior issued an extensive opinion on Indian tribal powers. *Powers of Indian Tribes*, 55 I.D. 14 (October 25, 1934). In discussing the power to administer justice on the Reservation, the Solicitor held:

> "So long as the complete and independent sovereignty of an Indian tribe was recognized, its criminal jurisdiction, no less than its civil jurisdiction, was that of any sovereign power. It might punish its subjects for offenses against each other or against aliens and for public offenses against the peace and dignity of the tribe. Similarly, it might punish aliens within its jurisdiction according to its own laws and customs. Such jurisdiction continues to this day, save as it has been expressly limited by the acts of a superior government.
> "It is clear that the original criminal jurisdiction of the Indian tribes has never been transferred to the States. Sporadic attempts of the States to exercise jurisdiction over offenses between Indians, or between Indians and whites, committed on an Indian reservation, have been held invalid usurpation of authority. 55 I.D. at 57.

Where there were no tribal court mechanisms for the administration of justice on the reservation, the Bureau of Indian Affairs established courts of Indian offenses with federally appointed Indian judges. However, these courts sit only where the tribe has not seen fit to administer its own court system. This concept is supported by the 1934 Solicitor's opinion:

> "Whichever of these explanations be offered for the existence of the Courts of Indian Offenses, their establishment cannot be held to have destroyed or limited the powers vested by existing law in the Indian tribes over the province of law and order and the administration of civil and criminal justice. 55 I.D. 64.

The Suquamish Indian Tribe of the Port Madison Reservation has retained full control over the tribal administration of justice on the Reservation. An extensive and comprehensive Law and Order Code was adopted by the tribe at a meeting of the full membership of the tribe. A copy of the Code is attached to this Memorandum as Appendix A. When petitioner in this case was arrested by the tribal police officers, he was brought before the Suquamish Tribal Court which issued on Order of Commitment confining petitioner to the Bremerton City Jail until his trial and setting a bail of $100.00 on each of the two charges. Petitioner refused to put up bail or to pledge tangible property in lieu of bail. On August 24, 1973, petitioner was released on his own personal recognizance upon order of the Suquamish Tribal Court and trial was set for September 25, 1973. A

copy of the pleadings in the Tribal Court file is attached hereto as Appendix B.

2. *The Suquamish Tribal Court Has Jurisdiction to Administer Justice Regarding all Matters Taking Place on Reservation Lands.*

It is a principle of Indian law that for Congress to take away from an Indian tribe any of its sovereign inherent powers, it must do so expressly. Congress, thus far, has not deprived Indian Tribal Courts of jurisdiction except as to certain "major crimes" for which jurisdiction is given to Federal Courts.

In *Buster v. Wright*, 135 Fed. 947 (8th Cir. 1905), *Appeal Dismissed*, 203 U.S. 599, the right of the Creek Nation to enforce a permit tax against non-Indiand was upheld. The 8th Circuit stated:

> "It was one of the inherent and essential attributes of its original sovereignty. It was a natural right of that people, indispensable to its autonomy as a distinct tribe or nation, and it must remain an attribute of its government until by the agreement of the nation itself or by the superior power of the republic it has taken from it. . . . The fact remains nevertheless that every original attribute of the government of the Creek Nation still exists intact which has not been destroyed or limited by act of Congress or by the contracts of the Creek Tribe itself. 135 Fed. at 950.

The 8th Circuit went on to find that the power to tax still existed in the Oglala Sioux Tribe since it was an original "precept of tribal sovereignty" and had not been "pretermitted by any federal statute or agency ruling thereunder."

This concept was reaffirmed in *Williams v. Lee*, 358 U.S. 217 (1959). In that case the Supreme Court held that jurisdiction over a civil suit between a non-Indian and an Indian was rightfully in tribal court and not in state court, citing *Worcester v. Georgia, supra*. The court acknowledged that state courts have been allowed to try non-Indians who committed crimes against each other on a reservation,

> "But if the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remainded exclusive." 358 U.S. at 220.

The court relied on the fact that the Navajo Tribe had in recent years greatly improved its legal system through increased expenditures and better trained personnel. It went on to find:

> "There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. (Citations omitted). The cases in this Court have consistently guarded the authority of Indian governments over their Reservations. Congress recognized this authority in the Navajos in the Treaty of 1968, and has done so ever since. If this power is to be taken away from, it is for Congress to do it." 358 U.S. at 223.

The principles of *Williams v. Lee, supra*, have been upheld recently in *McClanahan v. State Tax Commission of Arizona*, 36 L.Ed. 2d 129, 135 (March 27, 1973).

In *Quechan Tribe v. Rowe*, 350 F.Supp. 106 (S.D. Cal. 1972), the District Court held that the actions of the tribal law enforcement officer in enforcing tribal hunting laws against three non-Indian trespassers on the Reservation were lawful and not subject to interference by the state. That case is now on appeal to the Ninth Circuit Court of Appeals. The decision in that case recognizes Indians' right to enforce tribal ordinances against non-Indians.

A number of legal theories and policy arguments may be advanced in support of the jurisdiction of tribal courts over offenses committed by all persons on a Reservation. Among these theories and arguments are:

(1) A Tribe's power to exclude nonmembers from the Reservation implies a power to subject nonmembers who entered the Reservation to the jurisdiction of its courts.

(2) "Implied consent" and other related bases of personal jurisdiction over absent defendants used to uphold state "long-arm statutes" serve as an adequate doctrinal base.

(3) Title II of the Indian Civil Rights Act of 1968 protects non-Indians' constitutional rights from infringement by tribal courts.

(4) Upholding this type of jurisdiction would strengthen tribal sovereignty, in keeping with expressed congressional policy.

(5) If the tribal right to administer justice on the Reservation is denied, this would create a vacuum in law enforcement on the Reservation.

A. *Power to Exclude.*

The power of an Indian tribe to exclude nonmembers of the tribe from entering upon the Reservation was first clearly formulated in an opinion of the Attorney General rendered in 1821 with respect to the lands of the Seneca Indians:

> "So long as a tribe exists and remains in possession of its lands, its title and possession are sovereign and exclusive; and there exists no authority to enter upon their lands, for any purpose whatever, without their consent." 1 Op.Atty Gen. 465, 466.

In *Dodge v. Nakai*, 298 F.Supp. 17 (D. Ariz. 1968) and 298 F.Supp. 26 (D. Ariz. 1969), the Court held that the power to exclude nonmembers from the Navajo Reservation was reserved to the Navajo Tribe because the Navajo Reservation was set aside for "use and occupation" of the Navajo Tribe and because of language in the Navajo Treaty to the effect that no persons except those authorized should be permitted to pass over, settle upon, or reside in the area of the Reservation. The Court went on to find that the Indian Civil Rights Act demanded that a nonmember be given due process before he is excluded from the Reservation.

The *Treaty with the Suquamish*, January 22, 1855 (12 Stat. 927) granted the Port Madison Reservation to the Suquamish Indians also for their "use and occupation." In addition, in Article II of the Treaty, it was stated:

> "All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of said Tribes or bands, and of the Superintendent or agent. . . ."

The right to exclude necessarily includes the right to determine conditions upon which nonmembers shall enter the Reservation. 55 I.D. 14, 50. Conditions of entry must be consistent with federal law, but since no federal law prohibits jurisdiction of tribal courts over non-Indians accused of minor offenses, it follows that a condition for entry for nonmembers is submission to tribal court jurisdiction.

B. *Doctrine of "Implied Consent."*

Notices have been placed in prominent positions at the entrances to the Port Madison Indian Reservation to the effect that entry onto the Reservation lands will be deemed implied consent to submission to the jurisdiction of the Suquamish Tribal Court.

Implied consent is one of many doctrines used to uphold the so-called "long-arm" statutes in effect in almost every

state. This anology becomes clear if a criminal charge is thought of as an alleged tort against the Tribe.

An examination of the factors to be considered when determining the propriety of "long-arm" jurisdiction shows the fairness of the exercise of jurisdiction by the Suquamish Indian Tribe over nonmembers committing crimes on the Reservation. The inconvenience to the defendant in having to defend in a foreign jurisdiction is to be weighed against the interest of the plaintiff, i.e. the Tribe, in suing locally. In any case, the defendant will not be resident a great distance from the Reservation. In the instant case the defendant was actually a resident of the Reservation. In the case of the Suquamish, experience shows that the Tribal Court is the only forum where the Tribe is likely to get relief. The interest of the plaintiff Tribe is compelling.

In view of the fact that the defendant in this case resides on the Reservation and committed his offense against the tribal law enforcement officer on traditional Suquamish encampment grounds under the standards traditionally established for state "long-arm" jurisdiction, the Suquamish Tribe is not asserting jurisdiction that offends "traditional notions of fair play and substantial justice." *Millikan v. Meyer*, 311 U.S. 457, 463 (1940).

C. *The Indian Civil Rights Act Will Protect the Constitutional Rights of Non-Indian Defendants.*

Until the passage of the 1968 Indian Civil Rights Act, the judicial authority of an Indian Tribe was not subject to constitutional civil rights limitations. *Talton v. Mayes*, 163 U.S. 376 (1896). The 1968 Act extended a modified version of the first and fourth through eighth amendments to Indian Tribes and limited penalties to imprisonment for a term of six months or a fine of $500.00. (P.L. 90—284, 82 Stat. 77, 25 U.S.C. §1302).

The legislative history of the Indian Civil Rights Act, explicated in *Dodge v. Nakai, supra*, clearly shows that Congress understood that tribal courts would exercise jurisdiction over non-Indians as well as Indians:

> "Defendants contend that it was the intent of Congress in enacting Title II [25 U.S.C. §1302] to protect only the rights of Indians in their relationships with tribal governments, and that plaintiff Mitchell, a non-Indian, is not entitled to invoke the protection provided by that legislation. Defendants contend that the term 'any person' where it appears in Title II, should be interpreted

> as meaning 'any American Indian.' The legislative history of Title II does not provide this court with a justifiable reason for so restricting the plain language of the statute. . .
> In May, 1966, the Department of the Interior submitted supplemental testimony and a revision of the substitute bill that was *intended to establish rights for all persons who may be subject to the jurisdiction of tribal governments whether Indians or non-Indians*. See Summary Report on the Constitutional Rights of American Indians of the Senate Subcommittee on Constitutional Rights of the Committee on the Judiciary, 89th Cong., 2d Sess., at 9-10 (1966). At this point, along with immaterial changes the term 'any person' was substituted for the term 'American Indian' throughout the bill that eventually became Title II. That language remained in the bill up to and including the time of its enactment into law." (Emphasis added)

Therefore, "any person" is guaranteed substantially the same rights under tribal jurisdiction as he would be under state and federal jurisdictions.

Thus, there is no argument that a Tribal Court having jurisdiction over offenses committed by non-Indians would result in the denial of constitutional protections to non-Indians in Tribal Courts. Congress clearly intended that these constitutional protections should be available for non-Indians in Tribal Courts and the procedures of the Suquamish Tribal Court are evidence of the intention by the Court and the Tribe to allow full Civil Rights protections ordered by federal law.

D. *Congressional and Executive Policy Regarding Tribal Sovereignty.*

The attitude of Congress toward the concept of tribal sovereignty has changed drastically over the years. The General Allotment Act of 1887 (24 Stat. 388) was clearly an attempt to dismantle tribal governments and Indian communities and provide for the assimilation of Indians into the dominant society. A major reversal of this governmental policy and approach toward Indian affairs was effectuated by the Indian Reorganization Act of 1934. The purpose of that Act was to resurrect and revitalize concepts of Indian sovereignty and procedures of self government. The 1968 Indian Civil Rights Act by recognizing power of self government of Indian Tribes as including executive, legislative and judicial functions also reaffirms the congressional policy

to afford to Indian Tribes the right to regulate conduct within their Reservations as sovereign government bodies.

There has also been a change in executive policy towards the strengthening of tribal sovereignty and tribal institutions. In a message to Congress dated July 8, 1970, H.R. Doc. No. 90-363, 91st Congress, 2d Session (1970), President Nixon stated:

> "This, then, must be the goal of any new national policy toward the Indian people: To strengthen the Indian's sense of autonomy without threatening his sense of community."

The President then went on and recommended a number of changes in executive policy which would have the result of transferring to Indian tribes many of the functions theretofore performed by the federal government and of encouraging greater development by tribes of their Reservations.

In furtherance of these congressional and executive policies regarding the strengthening of tribal government, assertion of jurisdiction by tribal courts over offenses committed by anyone on a Reservation would protect the Reservation from outside intruders and increase the status of tribal government in the eyes of tribal members.

E. *Law Enforcement Vacuum.*

As a practical matter, jurisdiction of a tribal court over offenses committed by all persons on the Reservation is necessary for the carrying out of an effective law enforcement program on the Reservation. The instant case clearly proves this point. When the Suquamish Indian Tribe planned their annual Chief Seattle Days celebration, the Tribe knew that thousands of people would be congregating in a small area near the tribal traditional encampment grounds for the celebration. A request was made of Kitsap County to provide law enforcement assistance. One deputy was available for approximately one 8-hour period during the entire weekend. The tribe also requested law enforcement assistance from the Bureau of Indian Affairs, Western Washington Agency. They were told that they would have to provide their own law enforcement out of tribal funds and with tribal personnel.

Petitioner in this case was arrested at approximately 4:30 a.m. The only law enforcement officers available to deal with the situation were tribal deputies. Without the exercise of jurisdiction by the Tribe and its courts, there could

have been no law enforcement whatsoever on the Reservation during this major gathering which clearly created a potentially dangerous situation with regard to law enforcement. Public safety is an underpinning of a political entity. If tribal members cannot protect themselves from offenders, there will be powerful motivation for such tribal members to leave the Reservation.

The attitude of the Bureau of Indian Affairs is that in view of established congressional and executive policies toward Indian self government, Tribes should exercise law enforcement jurisdiction and deal with law enforcement problems on their own. It would be deceptive of the United States government to provide for tribal law enforcement and deny to the Tribes federal law enforcement, only to have the courts refuse to allow tribal courts to assert jurisdiction over offenses committed by any persons on Reservations.

3. *Conclusion.*

In view of the judicial principle that governmental powers of Indian tribes are retained unless and until expressly withdrawn by Congress, it is evident that Indian tribal courts have jurisdiction over offenses committed by any persons on a Reservation. In balancing the benefit to Tribes in being able to enforce this jurisdiction with the burdens to be borne by non-Indian defendants before tribal courts, the need for the assertion of tribal jurisdiction becomes evident.

> "The historical limitations on both *in personam* and *in rem* jurisdiction, with their rigid tests, are giving way to a more realistic and reasonable evaluation of the respective rights of plaintiffs, defendants and the State in terms of fairness. . . . Such an evaluation requires a practical appraisal of the situation of the various parties rather than an emphasis upon the somewhat medieval concepts of presence and power." *Simpson v. Lochman*, 21 N.Y. 2d 305, 234 N.E. 2d 669 (1967).

The factual analysis of this case, the legal analysis of the powers of Indian tribes, and a review of the policies of the federal government toward Indian tribes all point to the need for this Court to reaffirm the inherent right of the Suquamish Indian Tribe to maintain an orderly community by regulating the conduct of those who choose to enter it.

DATED this 10th day of September, 1973.

Respectfully submitted,

ZIONTZ, PIRTLE, MORISSET & ERNSTOFF

BY _____
BARRY D. ERNSTOFF, of Attorneys for Amicus

DISTRICT COURT—SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS

Filed Sept. 11, 1973

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARK DAVID OLIPHANT, *Petitioner*, *vs.* EDWARD SCHLIE, CHIEF OF POLICE OF THE CITY OF BREMERTON, *Respondent*, and Additional Respondents: THE SUQUAMISH INDIAN TRIBE—RICHARD BELMONT, JR., CHAIRMAN OF COUNCIL OF SUQUAMISH INDIAN TRIBE; DONALD BREAD, SUQUAMISH TRIBAL MANAGER; FRED GUARDIPEE, SUQUAMISH TRIBAL POLICE OFFICER; GRACE DUGAN, SUQUAMISH TRIBAL JUDGE; and CECILIA HAWK, SUQUAMISH TRIBAL JUDGE; and GEORGE M. FELSHAW, SUPERINTENDANT OF THE WESTERN WASHINGTON TRIBAL AGENCY,	NO. 511—73C2 SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS

TO: THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON:

I.

There are added as additional respondents the above-named "Additional Respondents".

II.

That the Suquamish Indian Tribe is an Indian Tribe recognized by the laws of the United States as an Indian Tribe, whose Indian members in the distant past occupied

as a tribal community certain Indian lands upon a reservation known as the "Port Madison Indian Reservation". That the original boundaries of Port Madison Indian Reservation were established by a treaty between the United States and the Dwamish, Suquamish, and other Allied and Subordinate Tribes in Washington Territory on January 22, 1844 and ratified on April 11, 1859. That since that time the lands within those boundaries were settled by non-Indians; the members of the Suquamish Indian Tribe were compensated for those lands and the tribal community thereon terminated.

III.

That the Suquamish Indian Tribe now claims sovereignty of governmental civil and criminal jurisdiction over lands claimed to be within the boundaries of the Port Madison Reservation. That the Suquamish Indian Tribe and/or its members ceased to occupy any of the lands as a tribal community and ceased to maintain any customs, government, culture, regulations and/or authority over those lands and persons therein claimed to be within the present boundaries of the Port Madison Indian Reservation prior to the year of 1965, at which time it received recognization from the United States Government as an Indian Tribe and a Constitution and By-Laws were adopted.

IV.

That at the time in 1965 that the government of the Suquamish Indian Tribe was recognized by the United States Government, the land within the boundaries claimed by the Suquamish Indian Tribe was not occupied by the Suquamish Indian Tribe and/or its members as a tribal community, and there were no tribal customs, laws, rules and/or regulations adopted by its members for either the exercise of criminal and/or civil jurisdiction over persons within that area.

V.

That the governmental powers of the Suquamish Indian Tribe are vested in the Suquamish Tribal Council. That in 1965 the lands claimed to be within the Port Madison In-

dian Reservation consisted of approximately eight thousand (8,000) acres, of which only approximately forty-one (41) acres of Indian Tribal community land, which was and ever since that time has been unoccupied by the Suquamish Indian Tribe and/or its members. In the year 1969, approximately thirty-six (36) acres of the unoccupied tribal lands were leased by the Suquamish Indian Tribe for a term of fifty (50) years to Chief Seattle Properties, Inc., a Washington corporation, leaving a balance of approximately four (4) acres that is occupied by the terms of a lease with the American Legion, a baseball park and a graveyard. The remainder of the lands within the claimed boundaries of the Port Madison Reservation consist of roads and rights-of-way of public highways of the State of Washington; allotted lands belonging to Indians subject to the jurisdiction of the United States; and lands owned by non-Indians not subject to the jurisdiction of the United States. In the approximate eight thousand (8,000) acres claimed to be within the boundaries of the Port Madison Indian Reservation, there are approximately two thousand six hundred thirty eight (2,638) acres owned as allotted Indian lands subject to trust status and the jurisdiction of the United States, and approximately five thousand three hundred twenty one (5,321) acres that are owned by non-Indians and not subject to the trust status and jurisdiction and control of the United States. Thus, there is approximately 33-1/3% "Indian land" and approximately 67% non-Indian land within the claimed boundaries of the Port Madison Indian Reservation.

VI.

The land within the boundaries claimed by the Respondents to be the Port Madison Indian Reservation has not been occupied by any Indian tribal community of the Suquamish Indian Tribe for some unknown time in the past. The area has been occupied largely by non-Indians before and since 1930, and consists of a community of non-Indians residing in the area within an unincorporated area known as the Town of Suquamish, Kitsap County, Washington. The Town of Suquamish is occupied by non-Indians owning commercial and residential property zoned under the laws of Kitsap County and over whom there is criminal and civil jurisdiction of Kitsap County, State of

Washington. The area has been and now is occupied by approximately 1500 to 2500 non-Indian citizens of the United States and residents of the State of Washington. The area has been and now is occupied by a minority of Indians living on lands which are not under or subject to the jurisdiction and control of the United States and on allotted lands that are Indian lands subject to the jurisdiction and control of the United States. At the present time the Indian population occupying those lands within the claimed boundaries of the Suquamish Indian Reservation who are enrolled members of the Suquamish Indian Tribe is approximately forty-three (43) in number, consisting of approximately nineteen (19) adult members and approximately twenty-four (24) minors.

VII.

In January, 1973, the respondent, Richard Belmont, Jr., and other individuals were appointed members of the Tribal Council of the Suquamish Indian Tribe, and said respondent was appointed Chairman thereof. That on that date and ever since that time, said individual has been acting in that capacity under the authority of the Suquamish Indian Tribe and recognized by the United States Government, Department of Interior, Bureau of Indian Affairs.

VIII.

That the United States Government, Department of Interior, Bureau of Indian Affairs, on or about December 24, 1957, as appears in 22 F.R. 10515, and now contained in Code of Federal Regulations, Title 25-Indians, Subchapter B-Law and Order, passed regulations for the exercise of sovereign authority by Indian Tribal governments and establishing a Code of Indian Tribal Offenses. That in accordance with said regulations, in Section 11.301 thereof, the Superintendent of each Indian reservation is Commander of the Indian Police Force and generally responsible for the general efficiency and conduct of the members thereof. That the respondent George Felshaw at all times hereinafter mentioned is and was responsible as Superintendent of the Port Madison Indian Reservation for the conduct of the police officers hereinafter stated.

IX.

The Petitioner hereby incorporates the allegations stated in the Petition for Writ of Habeas Corpus and in addition thereto alleges as follows:

1. That while the Petitioner was incarcerated in the City of Bremerton Jail under the custody and control of the Respondent, Edward Schlie, Chief of Police of the City of Bremerton, persons unknown to the Petitioner, as police officers of the City of Bremerton, allowed Donald Bread and Fred Guardipee into the presence of the Petitioner and while he was being incarcerated, Donald Bread and Fred Guardipee requested that he deliver title and transfer possession of his automobile to them in exchange for his release from confinement from the City of Bremerton Jail. This the Petitioner refused to do. Previously to that time and place, while the Petitioner was confined in the City of Bremerton Jail, and unknown to him and without authority from him, Donald Bread and Fred Guardipee on the 22nd day of August, 1973 did see the wife of the Petitioner in the community of Suquamish, Kitsap County, Washington, and made the same request, which she refused.

2. That on the 23rd day of August, 1973, the Court made and entered an Order to Show Cause and Setting Hearing, returnable on August 24, 1973, by the Respondent, Edward Schlie, Chief of Police of the City of Bremerton, and to which he has not answered as of the date hereof, September 10, 1973.

3. That on the date of August 24, 1973, when the Order to Show Cause and Setting Hearing by the Court was returnable by the Respondent, Edward Schlie, Chief of Police of the City of Bremerton, Edward Schlie did cause the custody of the Petitioner to be transferred to Fred Guardipee in the forenoon of August 24, 1973, in the City Jail at Bremerton. At that time and place, and for the release of the Petitioner from imprisonment in the City of Bremerton Jail, police offices of the City of Bremerton, unknown to the Petitioner and acting within the authority, direction and control of Edward Schlie, together with Fred Guardipee, the Suquamish tribal police officer, did require the custody and control of the Petitioner to be released to Fred Guardipee in exchange for his release from imprisonment in the City of Bremerton Jail. Fred Guar-

dipee then required the Petitioner to sign an "Agreement of Defendant to Appear for Trial", a copy of which is attached and made a part hereof as the Petitioner's Exhibit II. Fred Guardipee, the Suquamish tribal police officer, did then deliver to the Petitioner an "Order Releasing Defendant on Personal Recognizance" signed by "Cecelia Hawk, Judge Suquamish Tribal Court" of the "Suquamish Provisional Court on Port Madison Indian Reservation", dated August 24, 1973, a copy of which is attached and made a part hereof as Petitioner's Exhibit III.

4. The additional defendants, Grace Dugan, Suquamish Tribal Judge; Cecelia Hawk, Suquamish Tribal Judge; Don Bread, Suquamish Tribal Manager; and Fred Guardipee, acting individually and/or in concert with the Chief of Police of Bremerton, at the time, times and places set forth in the Petition for Writ of Habeas Corpus and this supplement, have caused the personal liberty of the Petitioner to be detained, restrained and imprisoned in the past, and claim authority over his person to do so in the future, as a continuous event from the date of his "arrest" on August 19, 1973 to the present time. Cecelia Hawk, Suquamish Tribal Judge, and Fred Guardipee, Suquamish Tribal Police officer, claim authority over the person of the Petitioner whereby his release from imprisonment in the City of Bremerton Jail was exchanged for restraint on his liberty by being made to appear before the Suquamish Tribal Court on the 25th day of September, 1973, in accordance with Exhibit III hereof.

5. The respondents, George M. Felshaw, Superintendent of the Port Madison Indian Reservation and Commander of the Suquamish Tribal Police Force; Richard Belmont, Jr., Chairman of the Tribal Council of the Suquamish Indian Tribe; Donald Bread, Suquamish Tribal Manager; Fred Guardipee, Suquamish Tribal Police Officer; Grace Dugan, Suquamish Tribal Judge; and Cecelia Hawk, Suquamish Tribal Judge, acting individually and/or in concert with the respondent, Edward Schlie, Chief of Police of the City of Bremerton, and other unknown persons acting as deputy police officers of the Suquamish Indian Tribe, at the times and places set forth in the Petition for Writ of Habeas Corpus and this supplement, have caused the personal liberty of the Petitioner to be detained, restrained, and imprisoned and subject to the claimed sovereign authority of the Suquamish Indian

Tribe, its police officers, court and authority, and claim authority over his person to do so in the future, as a continuous event from the date of his false arrest on August 19, 1973 to the present time. Said respondents of the Suquamish Indian Tribe, individually and in concert together, have held the Petitioner in unlawful imprisonment, demanded money from him which they have no authority to receive, and have subjected him to cruel punishment and treatment. The Suquamish Indian Tribe, acting through its Tribal Chairman, Richard Belmont, Jr.; Cecelia Hawk, Tribal Judge; Fred Guardipee, Tribal Police Officer, for whom the respondent, George M. Felshaw, is responsible, claim authority over the person of the Petitioner whereby his release from imprisonment in the City of Bremerton Jail was exchanged for restraint on his liberty by being made to appear before the Suquamish Tribal Court on the 25th day of September, 1973 in accordance with Exhibit III hereof. A copy of the Petition for Writ of Habeas Corpus on file herein is attached and made a part of this supplement as Exhibit IV hereof.

X.

The Suquamish Indian Tribe and the individual respondents above-stated are acting in violation of the law of the United States, the State of Washington, and any tribal laws of the Suquamish Indian Tribe in the following particulars:

1. The sovereignty of the Suquamish Indian Tribe to govern, pass, or adopt laws promulgated by the United States, Department of Interior, Bureau of Interior Affairs, and/or its own customs, whereby it has police officers and a tribal court with judges, with criminal jurisdiction of a territorial nature over persons not members of the Suquamish Indian Tribe has never existed and does not now exist;

2. The passage of laws by the Suquamish Indian Tribe and/or the Suquamish Tribal Council, the establishment of the Suquamish Tribal Council and the orders of the Suquamish Tribal Court, and the actions of its police officers that relate to the conduct of the Petitioner, a non-Indian, herein alleged, are not law, or laws within the meaning of the United States Constitution. Therefore, the application thereof by the respondents herein-stated are in

violation of the laws of the United States, and the Constitution of the United States, in accordance with the following articles thereof, where the rights of the Petitioner are set forth:

a) Amendment IV—Searches and seizures
b) Amendment V—Due process; just compensation for property
c) Amendment VI—Jury trial for crimes; and procedural rights
d) Amendment XIV—Citizenship rights not to be abridged by States.

XI.

The Suquamish Indian Tribe and/or the individual respondents above-stated are acting in violation of the laws of the United States set forth in Chapter 15—Constitutional Rights of Indians, Pub. L. 90-284, 25 USCA, Sections 1301, 1302 of Subchapter I, and Subchapter II, Section 1311, by color of authority thereof and contrary thereto, as alleged in the Petition for Writ of Habeas Corpus and this supplement, in the following particulars:

1. That upon information and belief of the Petitioner, the purported laws claimed by the Respondents to have been violated by the Petitioner were never authorized and passed by due process of law in accordance with the Constitution of the United States, or in accordance with any Tribal Constitution or customs of the Suquamish Tribal Community.

2. That the Respondents, Grace Dugan and Cecelia Hawk, as Judges; and Fred Guardipee, as Police Officer, have had little or no training in the process of law to protect the constitutional rights of a citizen of the United States in the application and enforcement of the law to which they claim authority in applying to the Petitioner, and that their administration of "justice" in either the arrest and trial of the Petitioner is without any safeguards in procedure or training in accordance with due process of law to which the Petitioner is entitled in the protection of his liberty and freedom by the Constitution of the United States.

3. That Fred Guardipee is not a police officer of the law; the Suquamish Tribe Provisional Court is not a tribunal of law; and Cecelia Hawk and Grace Dugan are not judges or justices of the law; and the law which they claim to enforce

is not law within the meaning of the equal protection clause of the 5th Amendment of the Constitution of the United States and the 14th Amendment thereof, but is an arbitrary abuse of power by the taking into their own hands of the color of the law of the United States to which they are neither authorized or entitled.

XII.

Because of the foregoing facts alleged in the Petition for Habeas Corpus and this supplement thereto, the Petitioner has been, and shall continue to be, restrained of his liberty by the Respondents named herein, contrary to the Constitution of the United States and by purported orders of the Suquamish Indian Tribe.

XIII.

That the Respondents, Grace Dugan, Suquamish Tribal Judge; Cecelia Hawk, Suquamish Tribal Judge; Fred Guardipee, Suquamish Tribal Officer; Donald Bread, Suquamish Tribal Manager; Richard Belmont, Jr., Chairman of the Suquamish Indian Tribe Council; and George M. Felshaw, Superintendent of the Western Washington Tribal Agencies, acting under the color of the law of the Suquamish Indian Tribe and/or acting in its behalf, have in concert, or separately by themselves or their agents, violated the Constitutional rights of the Petitioner as provided in 25 USCA, 1302 (Constitutional Rights) in the following particulars:

1) Restrained and imprisoned the Petitioner after an unlawful arrest for charge of an offense over which as to the person of the Petitioner they had no jurisdiction and did thereby violate the right of the Petitioner to be secure in his person and property against unreasonable seizure;
2) Did incarcerate the person of the Petitioner in a room without food, heat or toilet facilities for a period of six hours, or more, on August 19, 1973, and by the display of armed force and the manner of confinement at the Tribal Office of the Suquamish Indian Tribe did inflict cruel and unusual punishment upon the Petitioner;
3) Did deny the person of the Petitioner the right to be informed of the nature and cause of the accusation against him, and to be confronted with the witnesses against him at the time of his sentencing to the City

of Bremerton Jail in accordance with the due process of the law to him applicable;

4) Deprived the person of the Petitioner of his liberty without due process of the law of the jurisdiction applicable to the person of the Petitioner.

WHEREFORE, in accordance with P.O. 90-284, Title 11, Section 203, dated April 11, 1968, of the United States (25 USCA 1303), the Petitioner requests the privilege of the Writ of Habeas Corpus, to test the legality of the arrest, restraint and detention by each of the Respondents, acting individually or in concert together.

Therefore, the Petitioner requests as provided by law from the allegations stated in the Petition for Writ of Habeas Corpus and Supplement thereto, that the Court, in accordance with 28 USCA Section 2243 (Issuance of Writ; Return; Hearing; Decision) issue an Order to Show Cause directed to each of the Respondents: Edward Schlie, Chief of Police of the City of Bremerton; Donald Bread, Suquamish Tribal Manager; Fred Guardipee, Suquamish Tribal Police Officer; Grace Dugan, Judge of the Suquamish Tribal Court; Cecelia Hawk, Judge of the Suquamish Tribal Court; Richard Belmont, Jr. Chairman of the Suquamish Tribal Council; and George M. Felshaw, Superintendent of the Western Washington Tribal Agencies, to show cause why a Writ of Habeas Corpus should not issue to dispose of the matter by releasing the Petitioner from the acts of detention and restraint against his liberty which the Petitioner has alleged, or as a matter as the Court may determine that law and justice require, after the return date and hearing has been held as the Court may determine.

The Petitioner further requests that the Order to Show Cause require the Respondents to return an answer to each of the allegations contained in the Petition for Writ of Habeas Corpus and this supplement thereto, by a date certain not less than twenty (20) days from the date said Order to Show Cause is issued, or the allegations contained therein shall be deemed to be true and correct by the Court, and that a copy of the Petition for Writ of Habeas Corpus, Supplement to the Petition for Writ of Habeas Corpus, and Order to Show Cause be served by the United States Marshall on each of the Respondents as provided by law. After the return date to the Order to Show Cause, the Petitioner requests, as the Court may determine, that either hearings be held for a determination by the Court as

to the necessary facts or law, and thereafter the Court grant the Writ of Habeas Corpus and dispose of the matter as law and justice requires.
DATED:

PETITIONER—MARK DAVID OLIPHANT

STATE OF WASHINGTON)
) ss.
County of KING)

MARK DAVID OLIPHANT, being first duly sworn, upon oath deposes and says: That he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

MARK DAVID OLIPHANT

SUBSCRIBED and SWORN to before me this 10 day of September, 1973.

NOTARY PUBLIC in and for the State of Washington, residing at; Suquamish, Wash.

DISTRICT COURT—EXHIBIT II TO SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS: AGREEMENT OF DEFENDANT TO APPEAR FOR TRIAL, DATED AUGUST 24, 1973

Filed Sept. 11, 1973

IN THE SUQUAMISH PROVISIONAL COURT ON THE PORT MADISON INDIAN RESERVATION

SUQUAMISH TRIBE *Plaintiff,* *v.* MARK OLIPHANT *Defendant.*	*NO. 1973-4* *AGREEMENT OF DEFENDANT TO APPEAR FOR TRIAL*

I hereby agree to appear for my trial in Suquamish Tribal Court to be held in Suquamish Tribal Office in Suquamish, Washington at 6:00 p.m. on September 25, 1973.

Dated this 24 day of August, 1973.

_____

Mark Oliphant

_____

Witness

_____

Witness

DISTRICT COURT—ORDER TO SHOW CAUSE AND SETTING HEARING

Filed Sept. 25, 1973

(Caption Omitted in Printing)

Petitioner filed a "Petition for Writ of Habeas Corpus" on August 23, 1973, and, by leave of Court, filed a "Supplement to Petition for Writ of Habeas Corpus" on September 11, 1973. In the "Order Granting Leave to File and Serve Supplement to Petition for Writ of Habeas Corpus," signed by the Court September 11, 1973, the petitioner was granted leave to serve the Petition on the additional respondents and it was ordered in open court that service would be made by the United States Marshal. A briefing schedule and hearing date were set on the assumption that service would be made immediately; however, the additional respondents have not yet been served or given notice of the hearing originally scheduled for October 11, 1973. Therefore, the Court modifies its earlier rulings in open court and

ORDERS that Edward Schlie, Chief of Police of the City of Bremerton, the original respondent, shall show cause why the writ should not be granted on the basis of the "Supplement to Petition for Writ of Habeas Corpus" on or before October 15, 1973. The additional respondents shall show cause why the writ should not be granted on the basis of the "Petition for Writ of Habeas Corpus" and the "Supplement to Petition for Writ of Habeas Corpus" on or before October 15, 1973. A memorandum of authorities shall be filed by petitioner on or before October 15, 1973. Answering memoranda, if any, may be filed by all parties on or before October 23, 1973. A hearing shall be had at 3:00 p.m., Thursday, October 25, 1973, before this Court.

In the returns and memoranda submitted pursuant to this Order, the Court requests that attention also be directed to these subjects:

1. Description of the various Indian lands, both Trust and non-Trust, involved in the present controversy and an analysis of their present status.
2. Description of the Suquamish Indian Tribe as presently constituted and the status of its members in relation to the lands in controversy.
3. Authority of the Suquamish Indian Tribe to promulgate its Code of Laws, affixed as Appendix A to the

Memorandum of Authorities of Amicus Curiae filed September 10, 1973.

4. Description of federal or state statutes or regulations, if any, which have limited or restricted the sovereign power of the Suquamish Indian Tribe.

The Clerk of this Court is hereby directed to mail an uncertified copy of this Order to petitioner and to counsel for the petitioner. The United States Marshal for this District is hereby directed to serve this Order, a copy of "Petition for Writ of Habeas Corpus," and a copy of "Supplement to Petition for Writ of Habeas Corpus" on all the named respondents.

DATED this 25 day of September, 1973, at Seattle, Washington.

/s/ Morill E. Sharp
UNITED STATES DISTRICT JUDGE

DISTRICT COURT—EXHIBIT 9 TO UNITED STATES MEMORANDUM OF AMICUS CURIAE: COMPLAINT, FOR VIOLATION OF OFFENSE OF SECTION 6, CHAPTER 3 OF SUQUAMISH INDIAN TRIBAL LAW AND ORDER CODE

Filed Oct. 26, 1973

IN THE SUQUAMISH PROVISIONAL COURT ON THE PORT MADISON INDIAN RESERVATION

THE SUQUAMISH INDIAN TRIBE,
Plaintiff,

vs. COMPLAINT

MARK DAVID OLIPHANT,
Defendant.

PERSONALLY APPEARED before me this date, _____, who, first being sworn complains and says: that one Mark Oliphant on or about the 19th day of August A.D. 1973 in the PORT MADISON RESERVATION, state of WASHINGTON, did commit the offense of section 6 chapter 3 as follows: While attempting to break up fight between this white man and (not eligible), was assaulted and knocked down causing bodily harm, contrary to the form, force and effect of the statutes in such case made and provided and against the peace and dignity of the SUQUAMISH TRIBE.

SAID COMPLAINT therefore prays that a warrant is issued for the arrest of said Mark Oliphant AND THAT HE BE DEALT WITH ACCORDING TO LAW.

/s/ (not eligible)

Subscribed and sworn to before me this _____ day of _____, A.D. 19 ___ .

(Unsigned) JUDGE

DISTRICT COURT—EXHIBIT 9 TO UNITED STATES MEMORANDUM OF AMICUS CURIAE: COMPLAINT, FOR VIOLATION OF OFFENSE OF SECTION 62, CHAPTER 3 OF SUQUAMISH INDIAN TRIBAL LAW AND ORDER CODE

Filed Oct. 26, 1973

IN THE SUQUAMISH PROVISIONAL COURT ON THE PORT MADISON INDIAN RESERVATION

THE SUQUAMISH INDIAN TRIBE,
Plaintiff,

vs. *COMPLAINT*

MARK DAVID OLIPHANT,
Defendant.

PERSONALLY APEARED BEFORE ME THIS DATE, _____ who, first being sworn complains and says: that one Mark Oliphant on or about the 19th day of August A.D. 1973 in the PORT MADISON RESERVATION, state of WASHINGTON, did commit the offense of section 62 chapter 3 as follows: Said defendant did wilfully and wrongly resist (not eligible) and knocked him down causing bodily harm (not eligible) apprehension but was (not eligible), contrary to the form, force, and effect of the statutes in such case made and provided and against the peace and dignity of the SUQUAMISH TRIBE.

SAID COMPLAINT therefore prays that warrant is issued for the arrest of said _____. AND THAT HE BE DEALT WITH ACCORDING TO LAW.

/s/ (not eligible)

_____

Subscribed and sworn to before me this _____ day of _____, A.D. 19___.

_____

(Unsigned) JUDGE

DISTRICT COURT—VERIFICATION OF RICHARD BELMONT, JR.

Filed Jan. 25, 1974

(Caption Omitted in Printing)

STATE OF WASHINGTON)
)
COUNTY OF KING)

I, RICHARD BELMONT, JR., being first duly sworn upon oath, do depose and say:

1. I am the Chairman of the Suquamish Indian Tribe of the Port Madison Indian Reservation, Washington.

2. I have read the original Memorandum of Authorities of the Suquamish Tribe as Amicus Curiae as well as the additional Memorandum of Authorities of Additional Respondents and know the assertions in those memoranda to be true.

_____

RICHARD BELMONT, JR.

SUBSCRIBED AND SWORN to before me this 25th day of January, 1974.

_____

NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

DISTRICT COURT—AFFIDAVIT OF MARTHA F. GEORGE

Filed Jan. 25, 1974

(Caption Omitted in Printing)

STATE OF WASHINGTON)
) ss.
County of King)

I, MARTHA F. GEORGE, being first duly sworn upon oath, depose and say:

1. I am eighty-one (81) years of age and an enrolled member of the Suquamish Indian Tribe.

2. I have lived within the area known as the Port Madison Indian Reservation for almost all my life. In my younger days I lived in Bremerton, Washington. I have lived in my present home for over fifty years. I have been well acquainted with all the members of the Suquamish Indian Tribe and "Certificate of Results of Suquamish Constitutional Election", a copy of which is attached to this Affadavit. I was elected and served as Chairman of the Suquamish Tribal Council for a period of three (3) years and one of the years was 1965 when the Constitution and By Laws of the Suquamish Indian Tribe was adopted.

3. Commencing approximately the year 1940 I attended meetings of the tribe quite regularly. To have a quorum it was necessary to have a meeting of twenty-eight (28) members or more. During that time most often not more than the members necessary to have a quorum of the general membership of the tribe would meet and it would be necessary at times to go out and bring in members of the tribe in order to have a quorum.

4. At all times from 1940 to the end of my chairmanship of the tribe there was never any talk at meetings by the members of passing laws to control the conduct of any person on the Port Madison Indian Reservation.

5. To be a member of the Suquamish Indian Tribe the Constitution requires a person to be one-eighth (⅛) Indian blood. I have made a list to my knowledge of all the enrolled members of the Suquamish Indian Tribe presently living on the Port Madison Indian Reservation. Their names and number are listed and with a question mark if they may not be an eligible member, as follows:

Adams family	
Mary	1
Margaret	1
Bernard	1
Pratt family	
Mildred	1
Willard	1
Harold (minor)	1
George family	
Martha	1
Lawrence family	
Chuck	1
Children (minors)	
Fowler family	5
Leonard	1
Ken	1
George family	
Marilyn	1
Children	5
Hawk family	
Cecelia	1
Children (2 minors)	4
Forsman family	
James	1
Marion	1?
Children (2 minors)	3?
Pratt family	
Agnes	1
Child (minor)	1
Loughry	
Ada	1
Mac	1
Webster	
Lawrence	1?
Child, adopted (minor)	1?
Deam family	
Charles	1
Child (minor)	1
Lindell family	
Mary	1
Children (minors)	5
Karrier	
Eddy	1
Children (minors)	4
Total members living on reservation	50

6. To my knowlege I have counted and made a list of the eligible voters that are now living within the boundaries of the Port Madison Indian Reservation and entitled to vote. Their number is approximately twenty-two (22).

7. All of the members living on the Port Madison Indian Reservation do not live in any local area, more or less together. Most of the members do not live in the area of the reservation. Different families living on the reservation live in different areas, some live on old allotments and others live on lands and pay taxes to the Kitsap County. Some live in the village of Suquamish, Millers Bay and other areas separated from another.

8. About four or five attend the Catholic Church, others do not attend church. None go to different or separate churches, schools from persons that are not members of the tribe. Chief Seattle Days was celebrated each year as sponsored by the American Legion. They had sponsored it every year for the past _____ years. The celebration was participated in by everyone, until 1973 when the present Tribal Council limited sponsorship and participation for Indian programs only.

/s/ 1/24/74

Martha F. George

SUBSCRIBED AND SWORN to before me
this 24th day of January, 1974.

/s/ PPM

Notary Public in and for the State of
Washington, residing at Seattle.

DISTRICT COURT—AFFIDAVIT OF ROBERT J. SMILEY

Filed Jan. 25, 1974

(Caption Omitted in Printing)

STATE OF WASHINGTON }
} ss
COUNTY OF KITSAP }

I, ROBERT J. SMILEY, being first duly sworn upon oath, depose and say:

1. I am the Associate Planner, Kitsap County Planning Department, employed by Kitsap County, Washington.

2. In 1969 the Kitsap Planning Department generated maps in Kitsap County, Washington, a copy of which is marked "MAP #7, Kitsap County Planning Map—1973". Represented on that map are dots indicating the number of dwellings located within the area mapped. The number of dwelling units was updated with information from building permits issued in Kitsap County, Washington. There are approximately a total of nine hundred seventy six (976) dwelling units, as indicated on Map #7 with the number thereof in a circle. A rough estimate of the population of the area occupying the dwellings is approximately three (3) persons per dwelling, for a total of two thousand nine hundred twenty-eight (2,928) living within the area marked on Map #4. Attached to this Affadavit is Maps of Petitioner's Memorandum of Authorities, the number of which I have referred to herein.

/s/ _____
Robert J. Smiley

SUBSCRIBED AND SWORN to before me this 25 day of January, 1974.

/s/ _____
Notary Public in and for the State
of Washington, residing at Seattle.

DISTRICT COURT—MEMORANDUM OPINION OF U.S. DISTRICT JUDGE MORILL E. SHARP

Filed April 5, 1974

(Caption Omitted in Printing)

This case involves the jurisdiction of an Indian tribal court over a non-Indian charged with commiting a criminal offense on tribal trust property.

Petitioner applied to this Court for a writ of Habeas Corpus and the matter came on for hearing September 11, 1973 and January 25, 1974, before the undersigned Judge. All parties appeared in person or by their counsel of record. The Court considered amicus curiae briefs submitted on behalf of Confederated Tribes of the Colville Indian Reservation, Quinault Tribe of Indians, National Tribal Chairmen's Association, Pima-Maricopa Tribes of the Gila River Reservation, Nisqually Tribe, and the Squaxin Island Tribe.

Petitioner, Mark David Oliphant, a non-Indian, was arrested by tribal deputy police, acting under the authority of the Squamish Indian Tribe of the Port Madison Indian Reservation, at 4:20 a.m. on August 19, 1973. Petitioner was charged with assaulting a tribal police officer and resisting arrest on land within the boundaries of the Port Madison Indian Reservation, which is held in trust by the United States for the benefit of the Squamish Indian Tribe. All acts alleged to have been committed by petitioner took place on the tribal encampment grounds on this trust land. Thirty-six acres of tribally-owned trust land, including the tribal encampment ground, were leased by the Squamish Indian Tribe to Chief Seattle Properties, Inc., a Washington corporation. The arrest took place during the Suquamish tribal celebration known as Chief Seattle Days, and a number of Indians were encamped on the tribal grounds to attend the celebration.

Following his arrest, petitioner was arraigned and bail was set in the amount of $100 for each charge, for a total of $200. Petitioner did not put up the bail and was incarcerated for a period of five (5) days in the Bremerton City Jail, as a prisoner of the Suquamish Indian Tribe, under an agreement between the City of Bremerton and the Bureau

of Indian Affairs providing for the holding of tribal prisoners in the jail facility. On August 24th, petitioner was released on his personal recognizance from the City of Bremerton Jail pursuant to an order of the tribal court.

Trial was set in tribal court for September 25, 1973. After the filing of this application for writ of habeas corpus, the tribal court continued the matter pending outcome of this federal court action.

On January 25, 1974, respondent Edward Schlie was dismissed from this proceeding by this Court in that he no longer had custody or control over the petitioner.

The Port Madison Indian Reservation was established pursuant to the Treaty of Point Elliott, January 22, 1855, and encompasses land established by an official survey approved May 5, 1860, as well as land added to the Reservation by a Department of Interior order dated October 21, 1864. The boundaries are also indicated by a survey approved September 8, 1874. These surveys established that the Port Madison Reservation is located on the mainland opposite Bainbridge Island in Township 25 and 26 North, Range 2 East, W.M., State of Washington. There have been no Congressional enactments or other federal action terminating or diminishing the boundaries of this reservation, either expressly or by implication. The alleged criminal acts took place on Government Lot 3, Section 21, Township 26 North, Range 2 East, W.M., State of Washington, which is within the established boundaries of the reservation.

The Suquamish Indian Tribe is a federally approved tribe organized under the Indian Reorganization Act of 1934 and operating under a valid constitution and bylaws. Under the Indian Reorganization Act of 1934, Indian tribes were authorized to organize and function as local governmental bodies on reservations and certain inherent sovereign powers of the tribes were recognized. The Suquamish Indian Tribe is a tribe so organized.

The tribe has established a valid justice and law enforcement program on the reservation by enactment of an approved Law and Order Code and the establishment of a police system and tribal court. The existence of the tribe and its right to carry out government services has at all times been recognized by the Department of Interior, United States Congress, and the courts.

Once a reservation has been established, all tracts in-

cluded within it remain a part of the reservation until separated therefrom by Congress. *U.S. v. Celestine*, 215 U.S. 278 (1909). A Congressional determination to terminate must be expressed upon the face of a Congressional act or be clear from the surrounding circumstances and legislative history of an enactment. *Mattz v. Arnett*, 412 U.S. 481 (1973). Congress has not terminated or diminished the Port Madison Indian Reservation or changed or abolished its boundaries since the enlargement in 1864. Merely opening the reservation to non-Indian settlement does not terminate nor diminish the reservation boundaries. Since Congress has not terminated or diminished the reservation, the boundaries described above still constitute the boundaries of the Port Madison Indian Reservation.

The nature of Indian tribal powers is marked by three fundamental principles: (1) an Indian tribe possessed, in the first instance, all the powers of any sovereign state; (2) Congress rendered the tribe subject to the legislative power of the United States, and, in substance, terminated the external powers of sovereignty of the tribe but did not by itself terminate the internal sovereignty of the tribe, i.e., its powers of local self-government; and (3) these internal powers were, of course, subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, the powers of internal sovereignty have remained in the Indian tribe and their duly constituted organs of government. *Worcester v. Georgia*, 31 U.S. 515 (1832).

So long as a complete and independent sovereignty of an Indian tribe was recognized, its criminal jurisdiction, no less than its civil jurisdiction, was that of any sovereign power. It might punish its subjects for offenses against each other or against aliens and for public offenses against the peace and dignity of the tribe. Furthermore, an Indian tribe's powers of local self-government originally included the power to enact criminal laws pertaining to non-Indians and to confer upon its tribal court jurisdiction over the person of a non-Indian to enforce such laws on those lands reserved for such Indians within the established boundaries of their reservation. Such jurisdiction continues to this day, save as it has been expressly limited by the acts of a superior government, i.e., the United States Government. 55 I.D. 14 (October 25, 1934). Therefore, the

Suquamish tribe may exercise its powers of local government over a non-Indian who enters within the tribe's territorial jurisdiction and commits an offense defined as a crime by its local tribal laws unless Congress has expressly extinguished the tribe's original inherent powers of self-government with respect to such a crime.

Although the acts of petitioner may constitute a federal crime under the general criminal laws of the United States, the same acts may also constitute a tribal crime under the local laws of the Suquamish Indian Tribe for which the offender may be lawfully prosecuted and punished by the Suquamish tribal court. In the present case, the United States has chosen not to assert its jurisdiction and the tribe has asserted its share of the concurrent jurisdiction of the tribe and the United States.

This conclusion is consistent with the policy of Congress and the Secretary of the Interior to encourage, stimulate and educate Indian tribes to establish and strengthen their local governments and courts to handle their law enforcement problems according to tribal laws.

Congress has, to an extent, limited the governmental powers of the Suquamish tribe to enforce its local laws in that an Indian tribe may not enact local laws which conflict directly with federal laws applicable in Indian country and its criminal jurisdiction is limited to a criminal penalty of not more than six months imprisonment or a fine of $500 or both for any one offense in violation of its tribal laws.

In addition, Congress has granted certain protections to persons subject to tribal jurisdiction in 25 U.S.C. §1302 of the Indian Civil Rights Act of 1968. This Act applies to both Indians and non-Indians alike when within tribal jurisdiction. *Dodge v. Nakai*, 298 F.Supp. 17 (D. Ariz. 1968). Thus, any person has the right to declaratory and injunctive relief by a federal court for violation of the Indian Civil Rights Act by tribal government. In addition, as in this case, a person may apply to the United States District Court for a writ of habeas corpus.

The Suquamish tribal court, the duly constituted and authorized branch of Suquamish tribal government, has jurisdiction over the subject matter and person of the petitioner and thus far has provided petitioner with all appropriate protections under the Indian Civil Rights Act of 1968 in accordance with concepts of due process and the

equal protection of the laws as in the United States Constitution.

The Court's conclusions as to the jurisdiction of the Suquamish Indian Tribe over non-Indians is restricted to the facts of this case, that is, criminal offenses over which the United States has not declared its jurisdiction occurring on land held in trust by the United States Government for the benefit of Indians within the exterior boundaries of the Port Madison Indian Reservation. Jurisdiction of the Suquamish tribe over non-Indians on fee patent lands within the reservation is not presently before the Court, and the Court expresses no views on the question.

In view of the jurisdiction of the Suquamish tribal court and the Suquamish tribe over the person and subject matter herein and the fact that petitioner has been afforded all the protections available to him under the Indian Civil Rights Act, judgment shall be entered denying the application for a writ of habeas corpus.

The Clerk of this Court is instructed to send uncertified copies of this Memorandum Opinion to all counsel of record.

DATED at Seattle, Washington, this _____ day of March, 1974.

/s/ Morill E. Sharp
UNITED STATES DISTRICT JUDGE

DISTRICT COURT—JUDGMENT

Filed April 5, 1974

(Caption Omitted in Printing)

This action came on for trial (hearing) before the Court, Honorable Morell E. Sharp, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the petition for a writ of habeas corpus is hereby denied and the petition is herewith dismissed.

DATED at Seattle, Washington, this 5th day of April, 1974.

/s/ _____
Betty Fleming
Deputy Clerk of Court

DISTRICT COURT—NOTICE OF APPEAL

Filed April 30, 1974

(Caption Omitted in Printing)

NOTICE IS HEREBY GIVEN that MARK DAVID OLIPHANT, Petitioner above-named, hereby appeals to the United States Court of Appeals for the 9th Circuit from the Judgment entered in this action on the 10th day of April, 1974 denying the issuance of a Writ of Habeas Corpus as petitioned for herein.

/s/ _____
PHILIP P. MALONE,
Attorney for Petitioner

NINTH CIRCUIT COURT OF APPEALS—OPINION

Filed Aug., 24, 1976

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARK DAVID OLIPHANT,
Plaintiff-Appellant,
vs.
EDWARD SCHLIE, Chief of Police of the CITY OF BREMERTON, and THE SUQUAMISH INDIAN TRIBE — RICHARD BELMONT, JR., Chairman of Council of SUQUAMISH INDIAN TRIBE; DONALD BREAD, Suquamish Tribal Manager; FRED GUARDIPEE, Suquamish Tribal Police Officer; GRACE DUGGAN, Suquamish Tribal Judge; CECILIA HAWK, Suquamish Tribal Judge; and GEORGE M. FELSHAW, Superintendent of the Western Washington Tribal Agency,
Defendant-Appellees.

No. 74-2154
OPINION

Appeal from the United States District Court
for the Western District of Washington

Before: DUNIWAY and KENNEDY, Circuit Judges, and BURNS,* District Judge

DUNIWAY, Circuit Judge:

This case involves a question of Indian law which has been unresolved since it first arose almost a century ago; what is the jurisdiction of an Indian tribe over non-Indians who commit crimes while on Indian tribal land

* The Honorable James M. Burns, United States District Judge for the District of Oregon, sitting by designation.

within the boundaries of the reservation? *See Ex parte Kenyon*, C.C.W.D. Ark., 1878, Fed. Cas. No. 7720, 14 Fed. Cas. 353. Oliphant was arrested on the Port Madison Indian Reservation in the state of Washington by Suquamish tribal police on August 19, 1973, and charged before the Provisional Court of the Suquamish Indian Tribe with assaulting an officer and resisting arrest. He was incarcerated by order of the tribal court in lieu of $200 bail, but then released on his own recognizance by that court. Before trial he petitioned the United States District Court for a writ of habeas corpus, alleging that an Indian tribal court can have no jurisdiction over a non-Indian. The district court denied the writ and Oliphant appeals. We affirm.

Jurisdiction in this case is founded on 25 U.S.C. §1303 and 28 U.S.C. §§2241(c) (1) and (3). *See Colliflower v. Garland*, 9 Cir., 1965, 342 F.2d 369, 379. Oliphant's release on his own recognizance did not deprive the district court of jurisdiction. *Hensley v. Municipal Court*, 1973, 411 U.S. 345.

Oliphant argues that the Suquamish have no jurisdiction over non-Indians because Congress never conferred such jurisdiction on them. This misstates the problem.[1] The proper approach to the question of tribal criminal jurisdiction is to ask "first, what the original sovereign powers of the tribes were, and, then, how far and in what respects these powers have been limited." Powers

[1] The dissenting opinion similarly misstates the problem. The question is not whether Congress has conferred jurisdiction upon the tribe. The tribe, before it was conquered, had jurisdiction, as any independent nation does. The question therefore is, did Congress (or a treaty) take that jurisdiction away? The dissent points to no action by the Congress, and no treaty language, depriving the tribe of jurisdiction. The language of the 1791 treaty with the Cherokees, cited in footnote 5 of the dissent, is no more than a waiver of the right that all nations retain, to endeavor, through diplomatic means to protect their citizens who go or reside abroad. The waiver is limited to those citizens who elect to settle on Indian land. It does not, expressly or by implication, reject the universal rule that one who visits another nation subjects himself to its jurisdiction. It does not imply that absent the treaty provision, the Cherokees would have lacked jurisdiction. Much less does it imply that the jurisdiction of the Cherokees over citizens was to be limited to those who settled on Cherokee lands. A citizen visitor to the Cherokee nation, like the settler, would be subject to its jurisdiction, but, unlike the settler, could invoke the diplomatic protection of the United States.

of Indian Tribes, 1934, 55 I.D. 14, 57. *See Ortiz-Barraza v. United States*, 9 Cir., 1975, 512 F.2d 1176, 1179. "It must always be remembered that the various Indian tribes were once independent and sovereign nations. . . ." *McClanahan v. Arizona State Tax Comm.*, 1973, 411 U.S. 164. 172, who, though conquered and dependent, retain those powers of autonomous states that are neither inconsistent with their status nor expressly terminated by Congress. *Worcester v. Georgia*, 1832, 6 Pet. (31 U.S.) 515, 560–61; *Cherokee Nation v. Georgia*, 1831, 5 Pet. (30 U.S.) 1, 17–18.

Surely the power to preserve order on the reservation, when necessary by punishing those who violate tribal law, is a sine qua non of the sovereignty that the Suquamish originally possessed. As the Eighth Circuit held seven decades ago when it upheld the right of the Creek Nation to tax non-Indian residents:

> It was one of the inherent and essential attributes of its original sovereignty. It was a natural right of that people, indispensable to its autonomy as a distinct tribe or nation, and it must remain an attribute of its government until by the agreement of the nation itself or by the superior power of the republic it is taken from it. *Buster v. Wright*, 8 Cir., 1905, 135 F. 947, 950, *appeal dismissed*, 1906, 203 U.S. 599.

The Supreme Court, in dictum, has declared not only that Indian tribes have criminal jurisdiction, but that "if the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive." *Williams v. Lee*, 1959, 358 U.S. 217, 220.

As we recently said in *United States v. Burns*, 9 Cir., 1975, ___ F.2d ___ (No. 74–3022, Dec. 22, 1975):

> Just as state law is not to apply on Indian lands, unless expressly authorized by federal statute, so also, federal enclave law is not to apply unless expressly authorized. ___ F.2d at ___ (slip op. at 4)

We turn to the relevant treaties and Congressional acts to see whether any has withdrawn from Suquamish the power to punish Oliphant for a violation of the tribal law and order code. Our approach is influenced by the long-standing rule that "legislation affecting the Indians is to

be construed in their interest." [2] *United States v. Nice*, 1916 241 U.S. 591, 599; *Santa Rosa Band of Indians v. Kings County* 9 Cir., 1975, ___ F.2d ___ (Nov. 3, 1975, slip op. at 6–7). *See also Bryan v. Itasca County*, 1976, ___ U.S. ___ (June 14, 1976, slip op. at 18–19); *McClanahan v. Arizona State Tax Comm.*, *supra*, 411 U.S. at 174.

The starting point in determining how much of their original sovereignty the Suquamish have lost is the Treaty of Point Elliott, 12 Stat. 927 (1859), the first treaty between these people and the Untied States. While other treaties with other tribes had expressly granted or withdrawn the power to try non-Indian criminals, the Treaty of Point Elliott was silent on the subject. M. Price, LAW AND THE AMERICAN INDIAN 22–27 (1973). The only significant surrender of internal autonomy was contained in Article IX of the Treaty, in which the Indian signatories agreed not to "shelter or conceal offenders against the law of the United States, but to deliver them up to the authorities for trial." 12 Stat. 929. *See Arizona ex rel. Merrill v. Turtle*, 9 Cir., 1969, 413 F.2d 683, *cert. denied*, 1970, 396 U.S. 1003.

The second and last treaty or agreement between the Suquamish and the United States, 33 Stat. 1078 (1905), involved the relinquishment of land by the Indian tribes residing on the Port Madison reservation. It did not mention the transfer of any powers and specifically provided that it did not deprive the Indians of any benefits "not inconsistent with the provisions of this agreement." 33 Stat. 1079. No treaty has deprived the Suquamish of criminal jurisdiction over Oliphant. We therefore shift our attention to Congressional acts.

Oliphant relies on three statutes to support his thesis that Indian tribes do not have criminal jurisdiction over non-Indians. First, he argues that 18 U.S.C. §1152 has withdrawn criminal jurisdiction over non-Indians from Indian tribes. We cannot read §1152 as withdrawing from Indian tribes criminal jurisdiction that they otherwise possess. It extends federal criminal laws applicable to federal enclaves to Indian country, but it does not attempt either to extinguish tribal jurisdiction or to declare federal jurisdiction exclusive. In light of the principles of statutory construction enunciated in *Nice*, *supra*, and *Santa Rosa*

[2] The dissent also flies in the face of this long standing rule.

Band of Indians, *supra*, this could end our inquiry. However, we find additional support in the legislative history of §1152.

Section 1152 originated as §4 of the Indian Trade and Intercourse Act of 1802, 2 Stat. 141. It was reenacted in 1817 (3 Stat. 383), 1834 (§25 of the Trade and Intercourse Act, 4 Stat. 733), and 1854 (§3 of the Act of March 27, 1854 10 Stat. 270), when it was modified to eliminate the possibility that an Indian subjected to tribal discipline could also be tried in federal court.[3] Except for minor language changes when it was incorporated into the Revised Statutes and later into the United States Code, §1152 has not changed since 1854.

Our reading of the Congressional history convinces us that §1152 was not intended, and should not be read, to prohibit Indian tribes from prosecuting non-Indians for offenses against tribal law committed on the reservation. Section 1152 can be explained more rationally as an attempt to protect Indian tribes, who had no established legal system and whose authority was frequently challenged by unsympathetic state governments, *see Cherokee Nation v. Georgia*, *supra*, from depredations by "unprincipled white men." H.R. Rep. No. 474, 23 Cong., 1st Sess. 98 (1834).

> [I]t is rather of courtesy than of right that we undertake to punish crimes committed in that territory by and against our own citizens. And this provision [§25 of the Trade and Intercourse Act of 1834] is retained principally on the ground that it may be unsafe to trust to Indian law in the early stages of their Government. *Id.* at 13.[4]

[3] That this measure did not also protect non-Indians against double jeopardy does not indicate that only Indians were susceptible to federal and tribal discipline. Passed during the Kansas-Nebraska debates of 1854, this measure was disposed of rapidly and almost without debate. Section 3 may well have protected only Indians from double jeopardy merely because, in the only case in which a person had suffered both tribal and federal punishment, the defendant happened to be a Creek Indian. 23 Cong. Globe 700–01 (1854).

[4] As stated in the House Report on a companion bill to establish a western Indian territory: "As to those persons not required to reside in the Indian country, who voluntarily go there to reside, they must be considered as voluntarily submitting themselves to the laws of the tribes." *Id.* at 18.

Only one case cited by Oliphant, *Ex parte Kenyon*, *supra*, tends to support his argument that §1152 deprives Indian tribes of jurisdiction over non-Indians.[5] *Kenyon*, however, concerned a crime committed outside the territorial boundaries of "Indian country," a fact which figured prominently in the court's opinion. *See Elk v. Wilkins*, 1884, 112 U.S. 94, 108. The assertion that an Indian tribe can have no jurisdiction over a non-Indian was dictum, mentioned only in passing and without supporting authority. Our *de novo* examination of Indian law decisions since *Cherokee Nation v. Georgia*, *supra*, convinces us that the statement by Judge Parker in *Kenyon* and cited as supporting Oliphant's position is wrong. LAW AND THE AMERICAN INDIAN, *supra*, 471–75; Recent Developments, *Indian Tribal Courts*, 18 ST. LOUIS U.L.J. 461, 462–64 (1975).

Second, Oliphant argues that the Indian Civil Rights Act of 1968, 25 U.S.C. §1302, ousts the tribal court of jurisdiction. That Act applies certain due process requirements to Indian tribes exercising powers of self-government because the Supreme Court in *Talton v. Mayes*, 1896, 163 U.S. 376, had held that the Bill of Rights in the Federal Constitution did not apply to Indian tribal governments. Nothing in the Indian Bill of Rights purports to withdraw any criminal jurisdiction of the Indian tribes. It recognizes such jurisdiction, but prescribes certain due process type limitations upon its exercise.

Section 1302 provides: "No Indian tribe in exercising powers of self-government shall—. . . (7) . . . impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both; . . . (10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons." Oliphant argues that a fair trial for him is impossible because non-Indians would be excluded from the venire. This issue is raised prematurely. Oliphant is entitled to a fair trial; if he should be denied one, appeal from a conviction or a petition for a writ of habeas corpus would then be

[5] The additional authorities cited by Oliphant, F. Cohen. HANDBOOK OF FEDERAL INDIAN LAW 148 (1945) and Criminal Jurisdiction of Indian Tribes over Non-Indians, 1970, 77 I.D. 113, *withdrawn* January 25, 1974, base their conclusions entirely on *Kenyon*. They are, therefore, only as persuasive as their source.

appropriate. Further discussion of this contention is unnecessary.

Third, Oliphant argues that §7 of Public Law 280 (P.L. 83–280, 67 Stat. 590, 1953, modified by P.L. 90–284, §401, 82 Stat. 78, 1968; 25 U.S.C. §1321) deprives the Suquamish of jurisdiction over him. This statute permits a state to assume certain criminal jurisdiction in Indian country, with the consent of the affected tribe. Pursuant to this law, Washington adopted a statute, Laws of 1957, ch. 240, assuming jurisdiction whenever the governor of the state received the tribal assent. The Suquamish consented and on May 15, 1958, the Governor proclaimed the effectiveness of the state jurisdiction.

However, in 1968, Congress provided for retrocession by a state of the jurisdiction assumed by it under §1321. P.L. 90–284, 82 Stat. 79, 25 U.S.C. §1323. On August 26, 1971, the Governor of Washington proclaimed retrocession to the United States of jurisdiction over the Suquamish Port Madison Indian Reservation. By Executive Order No. 11435, 33 F.R. 17339, the President designated the Secretary of the Interior as authorized to exercise the authority of the United States under §1323, his acceptance of retrocession to be effective by being published in the Federal Register. On April 14, 1972, the Secretary accepted the retrocession proclaimed by the Governor. 37 F.R. 7353.

Oliphant argues that the Governor's proclamation was invalid under state law and can have no effect. In our opinion, the question is one of federal law, not state law. The acceptance of the retrocession by the Secretary, pursuant to the authorization of the President, made the retrocession effective, whether or not the Governor's proclamation was valid under Washington law. In this respect, we agree with the views of Judge Denney in *United States v. Brown*, D. Neb., 1971, 334 F. Supp. 536, 540–41:

> The federal government, having plenary power over the Indians, had the power to prescribe any method or event it desired to trigger its own re-assumption of control over Indian affairs within a state. In fact, the triggering event could have been devoid of any mention of state action at all.
>
> The plenary power of the federal government over Indian affairs, the inescapable difficulty of requiring the Secretary to delve into the internal workings of the state government, and the reliance of the federal gov-

ernment upon what appeared to have been a valid state action, are all factors to be considered and lead the Court to the conclusion that the federal interpretation of the effectiveness of state action triggering the reassertion of federal jurisdiction is and was controlling. "Retrocession" does not imply any particular procedure or action on the part of the states involved and the need for finality and importance of the various competing interests here dictates that the state action presented complies with the federal requirements of "retrocession."

The federal government, having the power to preempt jurisdiction over the Omaha Reservation, had the power to so define and construe the word "retrocession" as to remove from the determination of federal assumption of jurisdiction any question of the procedural validity or invalidity of the state's act of retrocession. Considering the problems presented by any other holding, the Court holds that the term "retrocession," as determined by the Secretary of Interior, was fulfilled by such action as the state took in Resolution 37.

To the same effect is *Omaha Tribe v. Village of Walthill*, D. Neb., 1971, 334 F. Supp. 823, *affirmed*, 8 Cir., 1972, 460 F.2d 1327, *cert. denied*, 1973, 409 U.S. 1107.

Finally, we consider whether the exercise of criminal jurisdiction by the Suquamish in cases such as this one would interfere with or frustrate the policies of the United States. The sections of the tribal law and order code under which Oliphant is charged do not punish conduct otherwise privileged or authorize actions otherwise illegal under federal law. Thus no explicit conflict exists. Moreover, the federal government has been encouraging Indian tribes to adopt law and order codes, set up tribal courts, and exercise authority over reservation lands. Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians*, 22 U.C.L.A. L. Rev. 535. Tribal criminal jurisdiction over non-Indians, as limited by the Indian Bill of Rights, is a small but necessary part of this policy.[6]

[6] Our decision in *The Quechan Tribe of Indians v. Rowe*, 9 Cir., 1976, 531 F.2d 408, is not contrary to our conclusions. It applies the same principles that we apply, but finds in the tribal constitution an express limitation of the jurisdiction of tribal courts to "the trial and punishment of members of the tribe." It leaves open the question that we now decide. (see p. 411 & fn. 4).

Not only does the law relating to Indian tribes support the jurisdiction here in question; practical considerations also support it. It may not be as true as it once was that "[t]hey [the Indians] owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies." *United States v. Kagama*, 1886, 118 U.S. 375, 384. But antagonism between reservation Indians and the surrounding populations does persist. History, broken promises, cultural differences and neglect all contribute to it. Reluctance on the part of the States to accord to the Indians rights guaranteed to them by treaties still exists. *See, e.g., United States v. Washington*, 9 Cir., 1975, 520 F.2d 676, and the concurring opinion of Judge Burns at page 693. Part of the problem no doubt stems from the tax exemptions that Indians enjoy. *See, e.g., McClanahan v. Arizona State Tax Commission, supra.*

This case well illustrates the need for the jurisdiction here involved. The events occurred in Suquamish Tribal encampment grounds, during a Tribal celebration known as Chief Seattle Days, at a time when a number of Indians were encamped on the Tribal grounds. Counsel for the Tribe describe the situation as follows: (appellees' brief, pages 27–28):

> . . .When the Suquamish Indian Tribe planned its annual Chief Seattle Days celebration, the Tribe knew that thousands of people would be congregating in a small area near the tribal traditional encampment grounds for the celebration. A request was made of the local county to provide law enforcement assistance. One deputy was available for approximately one 8-hour period during the entire weekend. The tribe also requested law enforcement assistance from the Bureau of Indian Affairs, Western Washington Agency. They were told that they would have to provide their own law enforcement out of tribal funds and with tribal personnel.
>
> Appellant was arrested at approximately 4:30 A.M. The only law enforcement officers available to deal with the situation were tribal deputies. Without the exercise of jurisdiction by the Tribe and its courts, there could have been no law enforcement whatsoever on the Reservation during this major gathering which clearly created a potentially dangerous situation with regard to law enforcement. Public safety is an underpinning of a political entity. If tribal members cannot protect them-

selves from offenders, there will be powerfu' motivation for such tribal members to leave the Reservation, thereby counteracting the express Congressional policy of improving the quality of Reservation life.

Federal law is not designed to cover the range of conduct normally regulated by local governments. Minor offenses committed by non-Indians within Indian reservations frequently go unpunished and thus unregulated. Federal prosecutors are reluctant to institute federal proceedings against non-Indians for minor offenses in courts in which the dockets are already overcrowded, where litigation will involve burdensome travel to witnesses and investigative personnel, and where the case will most probably result in a small fine or perhaps a suspended sentence.

Prosecutors in counties adjoining Indian reservations are reluctant to prosecute non-Indians for minor offenses where limitations on state process within Indian country may make witnesses difficult to obtain, where the jurisdiction division between federal, state and tribal governments over the offense is not clear, and where the peace and dignity of the government affected is not his own but that of the Indian tribe.

Traffic offenses, trespasses, violations of tribal hunting and fishing regulations, disorderly conduct and even petty larcenies and simple assaults committed by non-Indians go unpunished. The dignity of the tribal government suffers in the eyes of Indian and non-Indian alike, and a tendency toward lawless behavior necessarily follows.

The order appealed from is affirmed.

MARK DAVID OLIPHANT v. EDWARD SCHLIE, Chief of Police of the City of Bremerton, and THE SUQUAMISH INDIAN TRIBE, et al.

KENNEDY, Circuit Judge, Dissenting:

I cannot agree with either the premises or the conclusion of the majority opinion, and therefore I respectfully dissent.

As the majority points out, the question whether Indian courts may exercise jurisdiction over non-Indians has remained unanswered for almost 100 years. The reason is that no federal court has had occasion to pass on the issue since *Ex parte* Kenyon, 14 Fed. Cas. 353 (No. 7720 W.D. Ark. 1878). The very absence of legal authority to support the contentions made on behalf of the tribal court indicates to me that the jurisdiction it attempts to exercise is novel and unusual, and certainly inconsistent with prior practice.[1] While this does not necessarily make the procedure improper, it does call for careful examination of the purpose and history of tribal courts to determine whether an assertion of jurisdiction over non-Indians is consistent with the powers granted by Congress to tribal governments during the last 100 years. Such an examination has persuaded me that Indian courts were not intended to have jurisdiction over non-Indians.

It is important to focus on the precise issue in this case. We are not considering whether Indian tribes may pass reservation ordinances, having the force of law, governing the conduct of the tribe's members; they may. Colliflower v. Garland, 342 F.2d 369, 376 (9th Cir. 1965). Nor are we determining whether Indians have the right to exclude from the reservation nonmembers they deem undesirable; they have. Quechan Tribe of Indians v. Rowe, 531 F.2d 408, 411 (9th Cir. 1976). Nor is there any question of potential lawbreakers' going unpunished, a point given special emphasis by the majority, for we have held that tribal

[1] Certain tribal codes expressly prohibit the assumption of jurisdiction by the tribal court of non-Indian offenders. *See, e.g.*, Quechan Tribe of Indians v. Rowe, 531 F.2d 408, 411 (9th Cir. 1976); 17 Navajo Tribal Code §101 *et seq.*; *Hearings on the Constitutional Rights of the American Indian Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 87th Cong., 2d Sess., pt. 3, at 679 (1963); *id.* pt. 2, at 385.

authorities have the power to apprehend violators of state and federal law and to deliver the offenders to the appropriate authority.[2] Oriz-Barraza v. United States, 512 F.2d 1176, 1179 (9th Cir. 1975). The sole question here is whether the accused, a non-Indian, suspected of having committed a violation on the reservation, must answer for the alleged offense before an Indian tribunal.

The answer to this question is not advanced by the majority's broad assertion that Indian tribes have inherent sovereignty presumed to exist in the absence of express congressional intent to the contrary. The broad dictum on Indian sovereignty pronounced by Chief Justice Marshall in Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 560–61 (1832), was a response to a state's attempted invasion of tribal privileges that had express federal sanction. As pointed out in a recent survey, Supreme Court cases generally rely on the notion of tribal sovereignty in determining the extent to which states can properly exercise jurisdiction where the federal government has decreed a measure of autonomy for the tribes. Martone, *American Indian Tribal Self-Government in the Federal System: Inherent Right or Congressional License?* 51 NOTRE DAME LAWYER 600, 627 (1976). The term "sovereignty," then, is merely a veil used where the issue is, in fact, one of federal preemption of regulation in the field of Indian affairs. *Id.* at 629–31; *see* McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 172 (1973).[3]

A different problem is presented when the controversy is not one involving state encroachment of a tribal privilege conferred by Congress, but is rather the exercise of tribal jurisdiction over an individual. Principles of "tribal sovereignty" developed in the preemption context simply have no application here. This Court, for example,

[2] By assaulting the tribal police officer, Oliphant was likely guilty of violating one or several of the following federal statutes: 18 U.S.C. §§111, 113, 1114, 1152; *see* Stone v. United States, 506 F.2d 561 (8th Cir. 1974), *cert. denied*, 420 U.S. 978 (1975).

[3] The power of Congress to divest tribes of any and all of their sovereign attributes is, of course, undisputed. For example, legislation has terminated the existence of various Indian tribes. 25 U.S.C. ch. 14.

As the Supreme Court recognized almost a century ago, only two truly sovereign entities exist at any place within the geographical limits of the United States: the federal government and the states of the union. United States v. Kagama, 118 U.S. 375, 379 (1886).

did not hesitate to control the exercise of power by tribal governments by ordering the issuance of a writ of habeas corpus, long before Congress enacted 25 U.S.C. § 1303. Colliflower v. Garland, 342 F.2d 369 (9th Cir. 1965).

The concept of sovereignty applicable to Indian tribes need not include the power to prosecute nonmembers. This power, unlike the ability to maintain law and order on the reservation and to exclude undesirable nonmembers, is not essential to the tribe's identity or its self-governing status. In fact, even as to tribal members, tribal courts only possess jurisdiction over petty offenses involving less than six months imprisonment and $500 fine. 25 U.S.C. §1302(7). Major crimes are prosecuted in federal court. 18 U.S.C. §1153. Therefore I do not find the doctrine of tribal sovereignty analytically helpful in this context and instead find it necessary to look directly at the applicable legislation to determine whether Congress intended the tribal courts to have the power to exercise jurisdiction over nonmembers.

As early as the turn of the ninetenth century Congress evidenced an intention to treat offenses by Indians against each other differently from offenses involving a non-Indian. Offenses in the latter category, where either the perpetrator or the victim was a non-Indian, were proscribed by specific statute. Indian Trade and Intercourse Act of March 30, 1802, ch. 13, §§4, 14, 2 Stat. 141, 143–44. Offenses in the first category "were left to be dealt with by each tribe for itself, according to its local customs." *Ex parte* Crow Dog, 109 U.S. 556, 571–72 (1883). This policy, the Court explained, reflected a recognition that it would be unfair to apply white men's standards of justice to interactions exclusively between Indians, who belonged to a separate culture. *Id.* at 571. The Court noted, moreover, that tribal courts were an integral part of tribal self-government:

> The pledge to secure to these people . . . an orderly government . . . necessarily implies . . . that among the arts of civilized life, which it was the very purpose of all these arrangements to introduce and naturalize among them, was the highest and best of all, that of self-government, the regulation by themselves of their own domestic affairs, the maintenance of order and peace *among their own members* by the administration of their own laws and customs.

Id. at 568 (emphasis added).

These considerations are, of course, not applicable where a non-Indian commits a crime on a reservation. There is no danger, in trying a non-Indian in state or federal court, that he will be subjected to cultural standards to which he is not accustomed. Nor is such a trial in derogation of the tribe's ability to control its own members.

In light of the above, silence in the Treaty of Point Elliott on the subject of tribal court jurisdiction cannot be taken as an assent to jurisdiction over all persons. Such silence, if it imparts any information at all, must be understood in light of then prevailing policies, which do not appear to have permitted jurisdiction by Indian tribes over non-Indians.[4] In earlier treaties, in fact, Congress had in certain instances specified that Indians might have jurisdiction over white men.[5] This practice changed for later treaties.[6] An opinion of the Attorney General, issued the

[4] Even commentators who argue in favor of tribal court jurisdiction over non-Indians have recognized that this would be a novel practice and inconsistent with the views that have prevailed for over a century in Congress and the administrative agencies in charge of Indian affairs; M. PRICE, LAW AND THE AMERICAN INDIAN 174 (1973); *see* Davis, *Criminal Jurisdiction Over Indian Country in Arizona*, 1 ARIZ. L. REV. 62, 92–94 (1959).

Law and order regulations promulgated by the Department of the Interior for Courts of Indian Offenses are explicitly limited to offenses committed by Indians. 25 C.F.R. §11.2CA-11.87NH (1975). These regulations, which were first promulgated in 1892, *see* Report of Commissioner of Indian Affairs, T.J. Morgan, Aug. 27, 1892, *reprinted in* 1 W. WASHBURN, THE AMERICAN INDIAN AND THE UNITED STATES 574 (1973), have been adopted as tribal codes by various Indian tribes. *See, e.g.*, Comment to §1 of title 17 of the Navajo Tribal Code.

[5] The 1791 treaty with the Cherokees, for example, provides:

> If any citizen of the United States, or other person not being an Indian, shall settle on any of the Cherokees' lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please.

Art. VIII, 7 Stat. 39, 40 (1791). This provision, of course, raises two separate inferences. First, the specific grant by Congress of jurisdiction over non-Indians who have settled on the reservation implies that such jurisdiction was not assumed to exist otherwise. More importantly, however, the grant of jurisdiction over certain whites only, those who have undertaken an affirmative act to affiliate themselves with the reservation, raises the strong inference that other whites were not subject to tribal jurisdiction.

[6] U. S. DEP'T OF THE INTERIOR, FEDERAL INDIAN LAW 323 (1958) notes that such provisions in early treaties merely followed the practice accepted with respect to international treaties. Later treaties, however, evidenced a change in this policy.

same year in which the Treaty of Point Elliott was signed, describes negotiations on this point with an Indian tribe:

> [T]he Choctaws express a wish in the treaty that Congress would grant to the Choctaws the right of punishing, by their own laws, "any white man" who shall come into the nation, and infringe any of their national regulations, (art. 4). But Congress did not accede to this request. On the contrary, it had made provision, by a series of laws, for the punishment of crimes affecting white men, committed by or on them in the Indian country, including that of the Choctaws, by the courts of the United States. (See act of June 30, 1834, iv Stat. at Large, p. 729, and act of June 17, 1844, v Stat. at Large p. 680.) These Acts cover, so far as they go, all crimes except those committed by Indian against Indian.

7 OP. ATT'Y. GEN. 174, 179 (1855). The contemporary refusal to grant other Indian tribes this very power over non-Indians indicates that the federal government did not consider such power an inherent attribute to tribal sovereignty. Absence of such an empowering provision in the treaty with the Suquamish raises a strong inference that Congress did not intend them to exercise such jurisdiction.

Modern day pronouncements of both Congress and the Interior Department reflect that view that tribal court jurisdiction does not extend to non-Indians. During House and Senate debates on the Indian Civil Rights Bill, supporters of the measure consistently referred to it as limiting "the power of tribal courts in dealing with tribal members." [7] No reference was made to the possibility that

[7] *See* Remarks of Rep. Reifel, 114 CONG. REC. 9552–53 (Apr. 10, 1968):

> Basically, these titles would accomplish two major objectives: First, they would create a bill of rights *for the protection of Indians* tried by tribal courts, and would improve the quality of justice administered by those courts; and second, they would provide for the assumption of civil and criminal jurisdiction by States over Indian country within their borders only with the consent of the tribes affected. Both of these objectives are important *to our Indian citizens;* the accomplishment of each of these objectives is long overdue.
>
> Mr. Speaker, at the present time when *an Indian citizen* appears before State or Federal courts he is accorded the constitutional rights of all Americans. But when that *same Indian citizen* is brought to book before a tribal court, which has power to punish him usually for as long as 6 months in jail, he has only those rights which the tribe is

these courts might exercise jurisdiction over nonmembers. A 1970 opinion by the Interior Department Solicitor [8] flatly concluded: "Indian tribes do not possess criminal jurisdiction over non-Indians[;] such jurisdiction lies in either the state or Federal Governments." 77 I.D. 113, 115 (1970).[9]

willing to recognize. Many tribes have behaved responsibly in the administration of justice on the reservations. Too often, however, tribal courts have not acted judiciously.

And more important, Mr. Speaker, under present procedures we have no way of telling whether a tribal court has abused its powers because it is usually not possible for a defendant to ever raise a question in an appeal or in a habeas corpus proceeding.

The enactment of this bill would clearly set forth certain fundamental *limitations on the power of tribal courts in dealing with tribal members:*

It would prohibit double jeopardy;

It would provide for the privilege against self-incrimination;

It would require a speedy and public trial;

It would require that the accused be informed of the nature of the offense charged, that he be confronted by witnesses against him, and that he have compulsory process for obtaining witnesses in his own favor;

It would prohibit excessive bail, and would provide by statute for a maximum punishment by a tribal court of 6 months in jail or $500 fine; and

It would provide for imprisonment only after a jury trial is requested by the defendant. [emphasis added.]

See also, Remarks of Sen. Ervin, 113 CONG. REC. 13,473 (May 23, 1967):

1. The historical development of a unique relationship between the Indian communities and the United States has resulted in a situation in which there exists, unfortunately, both the potentiality and the actuality of deprivation of individual rights by tribal governments.

2. Through evidence of the denial of substantive and political rights has been brought to the subcommittee's attention, it is apparent that *an Indian citizen's rights* are most seriously jeopardized by the tribal government's administration of justice. These denials occur, it is also apparent, not from malice or ill will, or from a desire to do injustice, but from the tribal judges' inexperience, lack of training, and unfamiliarity with the traditions and forms of the American legal system. [Emphasis added.]

[8] This memorandum was cited with approval in 78 I.D. 229,230 (1971). While the Interior Department has subsequently withdrawn this Memorandum, it has not published any position inconsistent therewith. In any case, the Memorandum is strong evidence of the Department's longstanding policy in this area. *See* M. PRICE, LAW AND THE AMERICAN INDIAN 173 (1973).

[9] *Accord,* W. BROPHY & S. ABERLE, THE INDIAN—AMERICA'S UNFINISHED BUSINESS 50 (1966); Newman, *Jurisdiction Over Indians and Indian Land in Washington,* in 1 STUDIES IN AMERICAN INDIAN LAW 232, 239 (R. Johnson *ed* 1970); Note, *The Indian Bill of Rights and the Constitutional Status of Tribal Governments,* 82 HARV. L. REV. 1343, 1356–57 (1969); *see* Comment, *The "Right of Tribal Self-Government" and Jurisdiction of Indian Affairs,* 1970 UTAH L. REV. 291, 298.

The current federal scheme for dealing with offenses on Indian land is consistent with the premise that Indian courts do not have jurisdiction over non-Indians. The interaction of sections 1152 and 1153 of title 18 of the Code leave little doubt on this matter.

Section 1152 makes federal law, including the Assimilative Crimes Act, applicable to Indian country. Exempted from the operation of the section are two classes of individuals: (a) Indians who have committed offenses against the person or property of another Indian, and (b) Indians who have committed offenses in Indian country for which they have been punished by the local law of the tribe. This provision can be traced back more than one hundred years to the Act of March 27, 1854, ch. 26, § 3, 10 Stat. 270. *See Ex parte* Crow Dog, *supra,* 109 U.S. at 558. The fact that these two exceptions extend only to situations where the crime was committed by Indians is alone a strong indication that Congress considered the residual jurisdiction of tribal courts to be limited to such offenders.[10]

This inference is greatly strengthened by section 1153. That section provides an exception to the exception in section 1152 by providing that where an Indian commits, against the person or property of another Indian, one of several major listed crimes, exclusive jurisdiction for the offense lies in federal court. Sam v. United States, 385 F.2d 213, 214 (10th Cir. 1967); *see* Felicia v. United States, 495 F.2d 353, 354 (8th cir.), *cert. denied,* 419 U.S. 849 (1974). It seems extremely anomalous that Congress would provide for exclusive jurisdiction in the federal courts for major offenses committed by Indians, but permit tribal courts to try non-Indians for those same major offenses.[11] The more reasonable inference, of course, is

[10] I find the majority's explanation of why this section protects Indians from double jeopardy but not non-Indians unpersuasive. Majority opinion, note 1. Far from being a simple oversight, it is, I think, strong evidence that the prevalent assumption at that time on the part of Congress was that Indian courts simply were not entitled to try and punish non-Indians. Moreover, the fact that Congress failed to correct any such "oversight" for more than 100 years is indicative that the wording accurately reflects the congressional intent.

[11] The Indian Civil Rights Act, 25 U.S.C. §1302(7), limits the penalty that may be imposed by a tribal court to 6 months imprisonment and

that Congress withdrew jurisdiction from the tribal courts to try major offenses only when these were committed by one Indian against another because it knew that tribal jurisdiction extended no further than this class of offenders.[12]

Section 1165 of title 18 prohibits unauthorized entry upon Indian land for the purpose of hunting or fishing. The legislative history of that provision indicates a clear congressional understanding that tribal jurisdiction does not extend to non-Indians. And it was precisely this lack of power by Indian tribes to punish non-Indians that formed the rationale for enactment of the section.

> The problem confronting Indian tribes with sizable reservations is that the United States provides no protection against trespassers comparable to the protection it gives to Federal property as exemplified by title 18, United States Code, section 1863 [trespass on national forest lands]. Indian property owners should have the same protection as other property owners. For example, a private hunting club may keep nonmembers off its game lands or it may issue a permit for a fee. One who comes on such lands without permission may be prosecuted under State law but a non-Indian trespasser on an Indian reservation enjoys immunity. *This is by reason*

a $500 fine. Section 1153, however, considerably antedates the 1968 Act, tracing its origins to the Indian Appropriation Act of 1885, c. 341, §9, 23 Stat. 385. *See* People v. Kagama, 118 U.S. 375 (1886).

[12] 18 U.S.C. §1160 provides some additional support for the proposition that Congress never assumed that Indian tribunals could exercise jurisdiction over non-Indians. That section provides for compensation for Indian victims of crimes committed by white men. In certain instances such compensation is to be paid by the United States treasury. The section provides, however, that no such compensation is to be paid where the victim "or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence." Although the passage discusses possible action by the Indian nation as a whole, no mention is made of the possibility of exacting restitution or retribution in tribal court. While, of course, this section is not directly applicable to the problem we are considering, I find it indicative of the congressional attitude toward the possibility that non-Indians might be subjected to the scrutiny of an Indian court. This section can be traced back to the Indian Trade and Intercourse Act of 1802, ch. 13, §4, 2 Stat. 141, which contains the quoted language virtually verbatim. The fact that Congress has left this portion of the section unchanged while repeatedly amending other parts is indicative that failure to refer to the possibility of tribal court justice was not inadvertent.

> *of the fact that Indian tribal law is enforcible against Indians only; not against non-Indians.*
>
> . . . .
>
> *Non-Indians are not subject to the jurisdiction of Indian courts and cannot be tried in Indian courts on trespass charges.* Further, there are no Federal laws which can be invoked against trespassers.
>
> . . . .
>
> The committee has considered this bill and believes that the legislation is meritorious. The legislation will give to the Indian tribes and to individual Indian owners certain rights that now exist as to others, and fills a gap in the present law for the protection of their property.

S. REP. No. 1686, 86th Cong., 2d Sess. 2–3 (1960) (emphasis added). *Accord*, Letter from Roger Ernst, Assistant Secretary of the Interior, to Senator Celler, Chairman of the Senate Judiciary Committee, Feb. 13, 1958, *id.* at 3, 4.

I am persuaded that Indian tribal courts were not intended to have jurisdiction over non-Indians. Although Congress has never explicitly so provided, it has repeatedly acted in accord with this premise. Unlike the majority, I would not require an express congressional withdrawal of jurisdiction. A presumption in favor of any inherent, general jurisdiction for tribal courts is wholly inconsistent with the juridical relations between the federal government and the Indian tribes that has existed for the past 100 years. Viewing tribal courts in their historical and cultural context, in light of the fact that virtually no white man appears to have been tried by an Indian tribunal in the past century, congressional silence on this point can hardly be viewed as assent.

Since I do not believe that Indian courts have jurisdiction over the appellant, I would not reach his claim that he would be denied due process were such a trial to take place. I would grant the writ of habeas corpus.

/s/ _____
Anthony M. Kennedy
United States Circuit Judge

DISTRICT COURT—PETITION FOR WRIT OF HABEAS CORPUS

Filed Nov. 6, 1974

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DANIEL B. BELGARDE,
Petitioner,
vs.
ROGERS C. B. MORTON, Secretary of Interior of the United States; SUQUAMISH INDIAN TRIBE; CECILIA M. HAWK, Judge, Suquamish Tribal Court; and GRACE DUGGAN, Judge, Suquamish Tribal Court.
Respondents.

NO. C74-6835

PETITION FOR WRIT OF HABEAS CORPUS

DANIEL B. BELGARDE, Petitioner, represented by his attorney, PHILIP P. MALONE, petitions the Court for a Writ of Habeas Corpus to test the legality of his detention by the Respondents and in determining the facts to enter an Order declaring the Respondents to have acted without jurisdiction and authority over the Petitioner contrary to law. The Petition shows the following:

I. JURISDICTION

The Court has jurisdiction of this matter in accordance with any one or all of the following authorities:

1. U.S. Constitution, Article I, Section 9, Clause 2;
2. 28 USCA 2241(c) (Habeas Corpus):
   "(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
   (3) He is in custody in violation of the Constitution of laws or treaties of the United States."
3. 25 USCA 1303 (Indians):
   "The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe."

II. FACTS

1. The Petitioner is a non-Indian of 21 years of age. At all times herein mentioned the Petitioner resided in the unincorporated town of Suquamish, Kitsap County, Washington.

2. The town of Suquamish, Washington is located within the boundaries of the Port Madison Indian Reservation. There is no community of Indians living on the Port Madison Indian Reservation. The Port Madison Indian Reservation consists of approximately 7276 acres of which approximately 63% thereof is owned in fee simple absolute by non-Indians and the remainder 37% is Indian owned lands subject to the trust status of the United States, consisting mostly of unimproved acreage upon which no persons reside. Residing on the reservation is an estimated population of approximately 2928 non-Indians living in 976 dwelling units. There lives on the reservation approximately 50 members of the Suquamish Indian Tribe. Within the reservation are numerous public highways of the State of Washington, public schools, public utilities and other facilities in which neither the Suquamish Indian Tribe nor the United States has any ownership or interest. In support of the data there is attached to this Petition the following:

Exhibit 1—Map of Port Madison Reservation
Exhibit 2—Affidavit of Martha F. George
Exhibit 3—Affidavit of Robert J. Smiley

3. The Suquamish Indian Tribe is an Indian Tribe organized under the Indian Re-organization Act of the United States, June 18, 1934 (48 Stat. 984), which does not authorize the Suquamish Indian Tribe to exercise any executive, legislative or judicial power over a non-Indian or non-Indian lands within the Port Madison Indian Reservation.

4. The Suquamish Indian Tribe has a Constitution and Bylaws adopted on November 16, 1964, pursuant to a vote only of its Indian members in which 56 voted of an alleged Indian membership of 112. It was approved by the United States under the authority of the Secretary of Interior pursuant to the Indian Re-organization Act of 1934, *(Supra.)*. In accordance with that Constitution membership is limited to enrolled persons of Suquamish Indian blood as of January 1, 1942, children born of those mem-

bers and persons having one-eighth Suquamish Indian blood. No person of non-Indian Suquamish Indian blood or not a child of a member can belong to the tribe, participate in the election of its governing body, or have a vote or determination in the passage of its laws and ordinances. The governing body of the tribe is the Suquamish Tribal Council.

5. In 1973, and subsequent to that time, the Suquamish Indian Tribe and the Suquamish Tribal Council for the first time asserted police powers of a sovereign over its members and all persons on the Port Madison Indian Reservation. It promulgated a "Law and Order Code", the violations or publication, of which the Petitioner was charged, without public notice, thereof, and without representation or consent of non-Indians and persons not members of the tribe residing on the Port Madison Indian Reservation. The Suquamish Indian Tribe has hired persons of Indian blood only as police officers, appointed members of the tribe as judges, acquired funds and property for the administration and enforcement of its laws from the United States for the payment of salaries, the purchase of property, and the arrest and incarceration of non-Indian persons violating tribal laws on the Port Madison Indian Reservation. Such police officers and judges affected the arrest and incarceration of the Petitioner as hereinafter stated.

6. The Secretary of Interior, acting through officers of the Bureau of Indian Affairs, has made contracts with the Suquamish Indian Tribe, supplied funds and property of the United States, and furnished facilities and training for the arrest by Indian police officers, the trial by tribal judges, and the detention and imprisonment of non-Indian persons violating tribal laws on the Port Madison Indian Reservation contrary to the Constitution of the United States and the laws of the Untied States as hereinafter stated. By such actions, contracts, funds and supplies, the Petitioner's freedom and custody has been and is continued to be detained by orders of the Suquamish Indian Tribe.

7. In the morning hour of approximately 2:00 o'clock A.M., Saturday morning, the 12th day of October, 1974, while driving his vehicle, a pickup truck carrying two passengers, Mark D. Oliphant and Brad Bray, on non-Indian land within the Port Madison Indian Reservation, in a

northerly direction on the public highway of Kitsap County, Washington, known as "Division Street", was forced to stop his vehicle by police officers of the Suquamish Indian Tribe, whose names are believed to be Wayne DeCoteau, Allen Jones and Carl Bigman. The vehicle of the Petitioner was forced to stop by one of the police vehicles being driven by one of those police officers immediately in front of the Petitioner's moving vehicle causing the Petitioner's vehicle to unavoidably collide with and into the side of the Indian police car. The other Indian police car came to a stop in the rear of the Petitioner's vehicle.

After blocking the vehicle of the Petitioner, one of the Indian police officers (believed to be Wayne DeCoteau) came out of the Indian police car that drove in front of the Petitioner's vehicle, and standing from a distance of less than twenty (20) feet in front of and to the left of the Petitioner's vehicle, pointed and fired a pistol held in his hands directly towards the Petitioner's vehicle and towards the face and view of the Petitioner and his passengers sitting in the seat of the truck, causing the Petitioner and his passengers great fear and apprehension of bodily injury whereby they submitted themselves to the Indian police officers without resistence. The Petitioner and the two passengers were immediately handcuffed by the Indian police officers. The Petitioner was forcefully shoved by one officer into the side of Petitioner's vehicle causing a dent in the side of his vehicle and injury to his person. The two passengers were released from custody at the scene by the Indian police.

The State of Washington police patrol officer arrived at the scene and a deputy sheriff of Kitsap County. Neither of said officers charged the Petitioner with any crime for violation of the laws of Washington and did nothing about the arrest and detention of the Petitioner by the Indian police. The actions of the Indian police and the authority claimed by the Suquamish Indian Tribe over offenses of non-Indians on the Port Madison Indian Reservation prevented the State Police and County Sheriff from enforcing the laws of the State of Washington and protecting the rights of the Petitioner under the laws of the State of Washington from the actions of the Indian police officers to which the Petitioner, as a citizen of the United States and the State of Washington, is entitled.

Thereafter in denial of the rights of the Petitioner as hereinafter stated, to be arrested and charged for crimes only of laws of the State of Washington and be protected by the rights of a citizen in the process of adjudications of those charges, the Indian police officers did take the Petitioner into custody to the tribal office in Suquamish and without having informed him of the charges of his arrest and detention and of any rights that he may have either under the Constitution of the United States, the laws of the United States, or the laws of the Suquamish Indian Tribe, did fill out forms each entitled "Temporary Order of Committment", each of which forms have already been signed prior to the above-stated incident by "Cecelia M. Hawk" and are attached and incorporated herein as:

Exhibit 4—Temporary Order of Committment
Exhibit 5—Temporary Order of Committment

The Petitioner was thereafter transported by two of the Indian police officers in a patrol car paid from funds of the United States to the City of Port Angeles Jail located a distance of approximately 60 miles from Suquamish and without Kitsap County and the Port Madison Indian Reservation. The Petitioner was incarcerated in the City of Port Angeles jail as a prisoner of the Suquamish Indian Tribe under a contract for holding said prisoners authorized by contract with the City of Port Angeles and the United States by the authority of the Secretary of Interior. Copies of the contracts made for the period April 15, 1974 to June 30, 1974 and July 8, 1974 are attached as:

Exhibit 6—Jail Contracts

The Petitioner was kept in the Port Angeles City jail in Clallum County, Washington, until 1:30 P.M., October 12, 1974, when bond was posted as accepted by Cecelia M. Hawk, Judge of the Suquamish Indian Tribe, subject to the freedom of the Petitioner further being detained thereafter by order of the Suquamish Indian Tribe to appear for trial before the Suquamish Indian Tribal Court.

Having to inform himself of the date to appear before the Suquamish Tribal Court, the petitioner appeared on October 18, 1974 at 7:30 P.M. with his attorney, Philip P. Malone, before the Suquamish Tribal Court held in the back half of a former barber shop, measuring approximately 8' x 10', not physically capable of handling a fair, free and open public trial or arraignment. Sitting at a desk

was the trial judge, Grace Duggan, who it is believed has little knowledge, training or practice in the law. The remaining part of the room was occupied by tribal police officers and persons prejudiced and openly hostile to the Petitioner and non-Indians opposed to the police authority of the Suquamish Indian Tribe over non-Indians.

Grace Duggan then read from a book, while requiring the Petitioner to stand in from of her desk, the Petitioner's rights, sections from the Law and Order Code, and the punishment for violation thereof of which the Petitioner was charged. The Petitioner does not know at the present time the sections of law of the Law and Order Code of which he is charged, since such code has neither been published or distributed to members of the non-Indian public on the Port Madison Indian Reservation. The Petitioner recalls from that hearing only that he has been charged with endangering the life of another and not "wreckless driving" as contained in Exhibit 4 and with destruction of "public property" not "private property" as contained in exhibit 5. The Petitioner has received no writing setting forth the charges alleged.

The Respondent, Grace Duggan, informed the Petitioner at the hearing of his rights to an attorney, his rights to trial now or later and the pleas that he could make in answer to the charges that she had read. Philip P. Malone gave notice that he was appearing as attorney for the Petitioner and was notified that no person could appear as attorney for a defendant before the Suquamish Tribal Court unless accepted by the "Chief Judge" and on having paid a fee to the tribal court. Grace Duggan was then informed by Philip P. Malone that this petition would be filed in this Court. Court was adjourned and the Petitioner's freedom continues to be detained subject to the order of Suquamish Tribal Court for a trial date unknown to the Petitioner at the present time.

It is believed that Grace Duggan is the "Chief Judge" of the Suquamish Indian Tribal Court.

III. LAW

1. The Petitioner is in the custody under or by color of the authority of the United States in accordance with the facts alleged because the President of the United States through the office of the Secretary of Interior, Bureau of

Indian Affairs has by policy, money, property and direction expressed or implied, authorized and paid for the detention, arrest, imprisonment and adjudication of the laws and orders of the Suquamish Indian Tribe as to non-Indian Petitioner, which are in violation of the Constitution of the United States, the laws of the United States and the laws of the State of Washington as hereinafter stated. 28 USCA 2241(c) (1).

2. The Petitioner is in the custody in violation of the Constitution of the United States, the laws of the United States and the Treaty of Point Elliott of 1855, (12 Stat. 927) and jurisdiction is in the Court in accordance with 28 USCA 2241(c) (2), in the following particulars:

> (a) The Suquamish Indian Tribe in accordance with Article 1 of the Treaty of Point Elliott did: ". . .cede, relinquish, and convey to the United States all their right, title and interest in and to the lands and country occupied by them. . ." Such land includes the land where the Petitioner was arrested. In Article IX of the treaty the tribe did: "acknowledge their dependence on the government of the United States." The land where the alleged offense occurred was on land within the Port Madison Indian Reservation no longer occupied by any Indians of the Suquamish Indian Tribe and therefore any power of Jurisdiction of the Suquamish Indian Tribe terminated as to offenses occurring on that land as to Indians and jurisdiction over such land as to offenses of non-Indians is not in the Suquamish Indian Tribe.
>
> (b) The United States Constitution by Article I, Section 8, Clause 3 (Regulation of Commerce), and by Article II, Section 2, Clause 2, (Treaty Making Power), delegated *exclusive power* to the United States Congress and to the President of the United States with the advice and consent of the Senate respectively to regulate commerce and make treaties with Indian tribes. The United States assumed exclusive jurisdiction of criminal offenses occurring within an Indian reservation by the Trade and Intercourse Act, 18 USCA 1152. The Constitution of the United States is the Supreme Law of the Land, which included the Port Madison Indian Reservation and therefore such power assumed is *exclusive*. U.S. Constitution Article VI. The assumption of jurisdiction by the Suquamish Indian Tribe over offenses of non-Indians on non-Indian land is in violation of those constitutional provisions and laws made pursuant to that authority on the Port Madison Indian Reservation which

> have been made exclusive by the exercise of constitutional powers of the Congress of the United States.
>
> (c) On August 15, 1953, the United States Congress acting under its power derived from the United States Constitution authorized the State of Washington to assume its exclusive jurisdiction over criminal offenses committed by or against an Indian in Indian Country situated within the State of Washington. Pub. Law 83–280 (67 Stat. 588 (1953)). Responding to that law, the State of Washington legislature did pass the following:
>
> Enacted Laws 1957, Ch. 240, Sec. 1, pg. 949, which reads: "The State of Washington hereby obligates and binds itself to assume, as hereinafter provided, criminal and civil jurisdiction over Indians and Indian territory, reservation, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Pub. Law 280, 83rd Congress, 1st Session)."

The Enacted Laws of 1957 provided that such jurisdiction of the State of Washington would be assumed by proclamation of the Governor of the State of Washington:

> "Whenever the governor of this state shall receive from the tribal council or other governing body of any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal and civil jurisdiction of the State of Washington to the extent authorized by federal law. . ." RCW 37.12.020.

On the 15th day of May, 1958, Governor Rosellini *having received such consent from the Suquamish Indian Tribe* issued a proclamation in accordance with that 1957 legislation reading:

> "THE CRIMINAL AND CIVIL JURISDICTION OF THE STATE OF WASHINGTON SHALL APPLY TO THE SUQUAMISH INDIAN PEOPLE, THEIR RESERVATION, TERRITORY, LANDS AND COUNTRY, AND ALL PERSONS BEING AND RESIDING THEREIN."

In 1963 the laws of the State of Washington of 1957, were amended by its legislature—those laws of 1957 being the assumption of criminal and civil jurisdiction authorized by the Washington legislature to be assumed with consent of Indian tribes to the governor by the governor's proclamation. Such amendment did not affect the Port Madison Indian Reservation since the Suquamish Indian Tribe had

consented and Governor Rosellini had issued a proclamation in accordance with the law passed by the legislature in 1957. *Supra.*

The 1963 amendment renounced jurisdiction assumed only as to tribes that *had not consented* to jurisdiction prior to 1963 by not applying such jurisdiction to: "Indians when on their tribal lands or alloted lands within an established Indian reservation and held in trust by the United States. . ." and as to those tribes that had not consented, the State of Washington maintained its exclusive jurisdiction as to eight items, number (8) of which reads:

> "Operation of motor vehicles upon the public streets, alleys, roads and highways: Provided further, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963, shall remain subject to state civil and criminal jurisdiction as if Chapter 36, Laws of 1963 had not been enacted."

In August 26, 1971, Governor Daniel J. Evans, issued a proclamation without authority of the legislature of the State of Washington declaring Governor Rosellini's Proclamation of the 15th of May, 1958, "null and void", and proclaimed that any jurisdiction exercised by the State of Washington over the Suquamish Port Madison Indian Reservation, except as provided under Chapter 36, Laws of 1963 (RCW 37.12.010–37.12.060), is retroceded to the United States. Exhibit 7 attached and incorporated herein is "Governor Evans' Proclamation 1971."

Since the Proclamation of Governor Evans was qualified in his proclaimed retrocession as to the laws of 1963 and the laws of 1963 provided that the 1957 laws passed by the legislature remain in effect as to tribes consenting, no civil and criminal jurisdiction was retroceded by that proclamation of Governor Evans.

Further, even if the retrocession by the proclamation of Governor Evans was law, excluded from such retrocession was civil and criminal jurisdiction as to offenses regarding the operation of motor vehicles upon public highways. RCW 37.12.010(8), *Makah Indian Tribe v. State*, 76 Wn.2d 485, 457 P. 2d 590 (1969).

The retrocession of the proclamation of Governor Evans in 1971 was made without authority of the Constitution of the State of Washington, wherein the authority of the Governor does not include the right to repeal laws and

proclamations made in pursuant to the legislature of the State of Washington. Wash. State Constitution, Article III. The passage and repeal of laws of the State of Washington is a legislative function in which the Governor can only participate by a veto thereof. *Supra.*, Art. III, Sec. 12; Art. I, Sec. 1 & Sec. 18. It may therefore be assumed that the action of Governor Evans by issuing the proclamation of 1971 was contrary and in violation of the constitution of the State of Washington. At the same time it is noted that the laws of Congress in 1968 authorizing a state to retrocede the criminal jurisdiction that it has assumed specifically by the laws of 1953 did not affect any cession made by the United States prior to the 1968 law which repealed the 1953 law. Pub. Law 90–384, title IV, sec. 403, Apr. 11, 1968, 82 Stat. 79, 25 USCA 1323.

Therefore the Respondents were without authority and jurisdiction to have the Petitioner arrested, detained and imprisoned and subject to the loss of his freedom by laws and orders of the Suquamish Indian Tribe and the aid and assistance of the United States, because the State of Washington has assumed exclusive jurisdiction to offenses of non-Indians occurring on the Port Madison Indian Reservation as provided in the proclamation of Governor Rosellini and the laws of the legislature of 1957 to which the Suquamish Indian Tribe has consented.

(d) The Petitioner is denied the full and equal benefit of the laws within the jurisdiction of the United States within the Port Madison Indian Reservation that are enjoyed by a white citizen of the State of Washington when on a public highway and is not subject to like punishment, pains, penalties, and exactions and no other, by laws and orders of the Suquamish Indian Tribe in violation of the 14th Amendment of the United States Constitution and in violation of the Civil Rights Act, 42 USCA 1981, which reads:

> Equal rights under the law:
> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

The benefits of the Suquamish Indian Tribe as to the Petitioner are not full and equal to that of the laws of the State of Washington wherein he resides in the following particulars:

1. The Petitioner is a citizen of the State of Washington and entitled to vote and be represented in a republican form of government wherein the laws that are made by it are made in pursuant to the consent of the governed and the first ten amendments to the Constitution of the United States are part of that law for his protection in the legislation, execution and adjudication of those laws. The Petitioner because of his race is denied membership in the Suquamish Indian Tribe; the constitution of the United States is not part of law of the Suquamish Indian Tribe, and the Petitioner does not have the benefit of the Bill of Rights under the laws of the tribe. The legislative, executive, and judicial functions of the tribal government are not separated. The tribal government is for the benefit of its members only and not for the benefit of all residents of the Port Madison Indian Reservation.

2. The laws of the State of Washington are published and made known to the Petitioner. The laws of the Suquamish Indian Tribe have not been published and are not made known by the tribe to non-Indians.

3. The Petitioner will not receive a fair trial in a Suquamish Indian Tribal Court by his peers for the judges are not elected but appointed by the tribe from persons of Indian ancestry only and non-Indians will not serve as jurors in the trial of cases.

4. The Petitioner is not entitled to an attorney who is qualified to practice law in the State of Washington of his choice in the trial of case, but only entitled to an attorney that has been approved by the "Chief Judge".

5. The fines, punishments and exactions of the laws of the tribe are different from and unlike the fines, punishments and exactions of the laws of the State of Washington.

6. The Court room and facilities are not adequate for fair, open and public trial. The judges and the Suquamish Tribal Court are prejudiced and hostile to the Petitioner as a non-Indian.

7. The income paid by the United States and the payments received by police officers and judges of the tribe is dependent upon those powers being exercised by them over all persons within the Port Madison Indian Reservation. Therefore the arrest, trial and conviction of the Petitioner is a foregone conclusion and he shall not

therefore receive a fair trial before the Suquamish Indian Tribal Court.

8. The laws passed by the Suquamish Tribe and applied to the Petitioner are not made in due process of law in that the Constitution of the Tribe does not authorize the Tribe to enact such laws, establish a police force and courts and adjudicate cases as to non-Indians. The laws of Washington, the establishment of a police force and courts are in accordance with its written constitution.

(e) The laws and orders of Suquamish Indian Tribe that resulted in the arrest, imprisonment, detention and custody of the Petitioner subject to the orders of the Suquamish Tribal Court and those orders thereof are in violation of the Indian Civil Rights Act, Pub. Law 90–284, Title II, Sec. 201, Apr. 11, 1968, 82 Stat. 77, 25 USCA 1302, which reads as follows:

"No Indian tribe in exercising powers of self-government shall—

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons."

The particulars set forth in paragraph (d) hereof are incorporated in this paragraph.

WHEREFORE, the Petitioner requests the Court in accordance with its jurisdiction stated in this Petition the privilege of the Writ of Habeas Corpus to test the legality of the arrest, restraint and detention of the Petitioner by each of the Respondents, acting individually and/or in concert together by issuing an order as follows:

1. An Order to Show Cause directed to each of the Respondents containing the following: (28 USCA 2243)

(a) Require each of the Respondents to return an answer to each of the allegations set forth in this petition and

matters set forth in the affidavits attached herein by a date certain and not less than twenty (20) days from the date said order is issued or the allegations shall be deemed true and correct by the Court;

(b) That the United States Marshall be directed to serve this Petition and the Order to Show Cause upon each of the Respondents.

2. After the return date to the Order to Show Cause hold hearings as the Court may determine to establish the facts and law and thereafter enter judgment thereon and issue a Writ of Habeas Corpus releasing the Petitioner from the acts of detention and restraint against his liberty under the laws of the Suquamish Indian Tribe and its orders against the Petitioner made pursuant thereto as law and justice require.

/s/ Daniel S. Belgarde

DANIEL B. BELGARDE, Petitioner

(JURAT OMITTED IN PRINTING)

DISTRICT COURT—EXHIBIT 4 OF PETITION FOR WRIT OF HABEAS CORPUS: TEMPORARY ORDER OF COMMITMENT DATED OCTOBER 12, 1974; VIOLATION OF SECTION 44, CHAPTER III OF THE SUQUAMISH TRIBAL LAW AND ORDER CODE

Filed Nov. 6, 1974

IN THE SUQUAMISH TRIBAL COURT OF THE PORT MADISON INDIAN RESERVATION

SUQUAMISH TRIBAL COURT

Suquamish Indian Tribe, *Plaintiff* *vs.* Dan D. Belgarde, *Defendant*	TEMPORARY ORDER OF COMMITMENT

TO THE KEEPER OF THE JAIL:

You are hereby ordered by the Suquamish Tribal Court to take into your custody Dan D. Belgarde, Defendant charged with the offense of destruction of private property in violation of Section 44, Chapter III of the Suquamish Tribal Law and Order Code and hold said defendant until such time he has posted $100.00, bail or brought before Court to show cause for trial.

Dated: _____ Cecelia M. Hawk
Judge, Suquamish Tribal Court
Port Madison Indian Reservation

Dated: _____ _____
Signature of Office in Charge
Suquamish Tribal Police

DISTRICT COURT—EXHIBIT 5 OF PETITION FOR WRIT OF HABEAS CORPUS; TEMPORARY ORDER OF COMMITMENT DATED OCTOBER 12, 1974; VIOLATION OF SECTION 59, CHAPTER III OF THE SUQUAMISH TRIBAL LAW AND ORDER CODE

Filed Nov. 6, 1974

IN THE SUQUAMISH TRIBAL COURT OF THE PORT MADISON INDIAN RESERVATION

SUQUAMISH TRIBAL COURT

SUQUAMISH INDIAN TRIBE,
Plaintiff
vs.
DAN D. BELGARDE,
Defendant.

TEMPORARY ORDER OF COMMITMENT

TO THE KEEPER OF THE JAIL:

You are hereby ordered by the Suquamish Tribal Court to take into your custody Dan D. Belgarde, Defendant, charged with the offense of wreakless driving in violation of Section 59, Chapter III of the Suquamish Tribal Law and Order Code and hold said defendant until such time he has posted $300.00 bail or brought before Court to show cause for trial.

Dated: 10/12/74

Cecelia M. Hawk
Judge, Suquamish Tribal Court
Port Madison Indian Reservation

Dated: _____

_____
Signature of Officer in Charge
Suquamish Tribal Police

DISTRICT COURT—EXHIBIT 6 OF PETITION FOR WRIT OF HABEAS CORPUS: AGREEMENT BETWEEN CITY OF PORT ANGELES AND UNITED STATES BUREAU OF INDIAN AFFAIRS DATED APRIL 15, 1974

Filed Nov. 6, 1974

(Caption Omitted in Printing)

THIS AGREEMENT made and entered into by and between the City of Port Angeles (Police Department) through its duly authorized commissioner, hereinafter referred to as a party of the first part, and the Bureau of Indian Affairs through its contracting officer, hereinafter referred to as the party of the second part.

NOW, THEREFORE, WITNESS

That the party of the first part shall care for prisoners placed in the custody of officers and for and in consideration of this service (which shall include room and board) the party of the second part will make payment to the City of Port Angeles, Washington, at the rate of $3.75 per day for the period beginning July 1, 1974 and ending June 30, 1975.

It is understood and agreed that payment for emergency medical and dental care of the prisoner sentenced by or being held for trial by the Courts will not be the responsibility of the party of the first part.

It is understood and agreed that the prisoners who have served their full time will not be released except upon written orders of the tribal court and their officers.

It is understood and agreed that prisoners committed to the Port Angeles City Jail will be subject to the same rules and regulations required of the other prisoners to be observed in said jail.

It is understood and agreed that payment will be made for this service at the end of each month of presentation by the Chief of Police of a proper invoice to the Bureau of Indian Affairs, Western Washington Agency, 3006 Colby Avenue, Federal Building, Everett, Washington 98201.

It is further understood and agreed that this agreement shall be for the above period with the option to renew subject to availability of funds. This agreement may be terminated upon thirty (30) days written notice to the other,

This agreement may be modified in writing upon mutual consent to both parties of the contract.

It is further understood and agreed that this agreement can be terminated by either party on thirty (30) days written notice.

This agreement is subject to the attached general provisions and Witness whereof both parties have hereunto set their hands on the date written above.

UNITED STATE OF AMERICA	HAL PUDDY
(Contracting Officer) A. LaCourse Area Property & Supply Officer	(Signer authorized to sign) Date: July 8, 1974 Hal Puddy, City Manager (Name & Title of Signer)
Name & Title of Signer	(Type or Print)

CONTRACT #14-20-0500-4162

DISTRICT COURT—ORDER OF U.S. DISTRICT COURT REFERRING CASE TO U.S. MAGISTRATE

Filed Nov. 12, 1974

(Caption Omitted in Printing)

It is ORDERED that this matter is referred to the United States Magistrate pursuant to Section 636, Title 28, United States Code, and Local Rule MR 28.

DATED this 11 day of November, 1974.

UNITED STATES/DISTRICT JUDGE

DISTRICT COURT—RETURN OF SUQUAMISH RESPONDENTS ON PETITION FOR FOR WRIT OF HABEAS CORPUS

Filed Jan. 31, 1975

(Caption Omitted in Printing)

The Suquamish Indian Tribe, Cecelia M. Hawk and Grace Duggan, judges of the Suquamish Tribal Court, by and through their attorneys ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT, and Barry D. Ernstoff, hereby respond to the Petition for Writ of Habeas Corpus pursuant to the Order to Show Cause issued December 13, 1974.

1. FACTS.

At approximately 10:00 P.M., October 11, 1974, Suquamish Tribal Chief of Police, Carl Big Man, reported to the Kitsap County Sheriff's Office that a vehicle was speeding dangerously through the streets of the town of Suquamish. No action was taken by the Sheriff's Department, and the vehicle continued to speed dangerously through the streets of the town. At 11:45 P.M., Tribal police officers Wayne P. DeCoteau and Alan Jones and Chief Big Man began pursuit of the 1973 black Ford pickup. (Copies of the Suquamish Tribal Police reports are attached hereto as Exhibit A). The officers signalled the vehicle to stop by turning on their blue lights and sirens, but the vehicle did not respond. The officers observed the vehicle speeding on South Street in a reckless manner and continued to follow the vehicle in hot pursuit.

The officers finally managed to block the road in front of the vehicle as it slowed down almost to a stop on Division Street, around the corner from South Street, at approximately 1:35 A.M. Chief Big Man proceeded to open the door of one Tribal police car in front of the vehicle, when the vehicle sped up and rammed into the right door of the Tribal police car which had blocked the road in front of the vehicle. He was injured by the impact of the vehicle hitting the police car.

The driver of the vehicle then backed it up and attempted to flee. Chief Big Man ordered Officer DeCouteau to fire a warning shot over the vehicle. This was done, and the vehicle finally stopped, and the driver, Petitioner Daniel Belgarde, was detained.

The Tribal police officers then called the Kitsap County Sheriff's Office to report the incident. At 2:20 A.M., an officer of the Sheriff's Office and a state patrolman arrived and conducted an investigation. Both the state and county officers refused to take any further legal action, and Petitioner was then arrested and transported to the Port Angeles City Jail, which contracts as the holding facility for the Suquamish Indian Tribal Court.

Petitioner was charged with reckless driving and destruction of Tribal property under the Suquamish Tribal Law and Order Code and was booked the next afternoon before the Suquamish Tribal Court and bail was posted.

On October 18, 1974, Petitioner appeared at Suquamish Tribal Court for his arraignment with his attorney, who informed the Tribal Court that this action would be commenced.

2. THE SUQUAMISH TRIBE AND THE TRIBAL COURT HAVE JURISDICTION OVER PETITIONER REGARDING THE OFFENSES FOR WHICH HE WAS CHARGED.

2.1 Validity of Tribal Court Jurisdiction.

In this petition, Petitioner has made a number and a variety of allegations regarding the Suquamish Indian Tribe and its jurisdiction over non-Indians. First, the Tribe has reason to believe that the Petitioner is, in fact, an Indian, though not a member of the Suquamish Indian Tribe. A recent Suquamish Elementary School census prepared for the Bureau of Indian Affairs lists two siblings of Petitioner as Indians who qualify for funds under the Johnson-O'Malley program, under which federal funds are available for special programs for Indians in local schools (See Affidavit of Charles Deam, attached hereto as Exhibit B).

Petitioner's allegations regarding the sovereignty of the Suquamish Indian Tribe, the boundaries of the Port Madison Indian Reservation, the Treaty of Point Elliott, and the jurisdiction of an Indian tribe over offenses committed by non-Indians on the Reservation, were all before this court in a previous case involving Suquamish Tribal jurisdiction, *Oliphant v. Schlie*, W.D. Washington, Cause No. 511–73C2. In a memorandum opinion, dated April 5, 1974, Judge Morell E. Sharp upheld the jurisdiction of the Suquamish Indian Tribe over non-Indians committing criminal offenses occurring on land held in trust by the

United States government for the benefit of Indians on the Port Madison Indian Reservation. A copy of the Memorandum Opinion is attached as Exhibit C. Most of the arguments being raised by Petitioner in this cause were considered and rejected by Judge Sharp in the previous case. Petitioner has raised certain issues not previously litigated in the *Oliphant* case which will be dealt with below.

2.2 Requirement That Attorney Be Admitted to Suquamish Tribal Court Bar.

Under Section 15 of Article 10 of the Suquamish Law and Order Code, all counsel who wish to be admitted to practice in the Suquamish Tribal Court may be admitted to practice upon motion to Chief Judge of the Court. The Code provides that:

> Any person who is a member in good standing of the Bar of any state of the United States or the District of Columbia, is of good moral character, and demonstrates to the Court the thorough knowledge of this Code, the rules of the Suquamish Tribal Court, and federal laws and regulations applicable to the Suquamish Tribe and some knowledge of the culture and traditions of its members, is eligible to apply for admission to general practice in this court. . . . .

Petitioner has not demonstrated that a requirement that his attorney in Tribal Court know the rules, laws, and customs of that Court is so burdensome as to be denial of a civil right under the Indian Civil Rights Act, 25 U.S.C. §1302. If such were the case then every state in the nation which requires passing a bar examination would be subject to the same attack.

2.3 Fairness of Trial.

Petitioner's general allegations that he cannot receive a fair trail because of the hostility of the judges of the Suquamish Tribal Court do not sustain his application for a writ of habeas corpus. The procedures and rules of the Suquamish Tribal Court and its officers have previously been approved after similar allegations in the *Oliphant* case. The judges of the court are elected by the Tribe at large and have undergone intensive training with the National Tribal Judges' Association and at a special Indian tribal judge course at the University of Washington Law School taught by Professor Ralph Johnson.

Chief of Police Carl Big Man is a Crow Indian who attended the Indian Police Academy in Roswell, New Mexico, in 1969. He served as a tribal police officer on the Crow Indian Reservation and continued in-service police training by the Bureau of Indian Affairs through 1972. In 1972, and in 1973, he served as probation and parole officer for the Cour d'Alene Indian Reservation and has served as Chief of Police of the Suquamish Tribe since January, 1974. Officers Jones and DeCoteau received police training in law enforcement at Olympic Junior College in Bremerton. The Tribal law enforcement program, including police and courts, operates under grants from the Bureau of Indian Affairs Law Enforcement Division and the Law Enforcement Assistance Administration (L.E.A.A.).

Petitioner has cited no specific averments beyond his general claim of lack of due process. Such general claims do not support a petition for habeas corpus relief.

2.4 Validity of Retrocession of Jurisdiction From the State of Washington.

Petitioner contends that the proclamation of Governor Daniel J. Evans, dated August 26, 1971, proclaiming the retrocession of criminal and civil jurisdiction over the Port Madison Reservation from the State of Washington back to the United States was invalid. He argues that the Governor acting alone does not have the power to repeal or retrocede such jurisdiction, and that therefore jurisdiction was not retroceded.

Any alleged improper gubernatorial action regarding this matter is of no consequence on the validity of such retrocession. In 1968, Congress passed P.L. 90-284, which, at Sec. 403 of Title IV (82 Stat. 79, 25 U.S.C. §1323) authorized the United States to accept a retrocession of jurisdiction. By Executive Order No. 11435 (November 21, 1968, 33 F.R. 17339), the President designated the Secretary of Interior to accept retrocession of jurisdiction by a state, providing that acceptance of such retrocession shall be effected by publication in the Federal Register of a notice specifying the jurisdiction retroceded and the effective date of the retrocession.

On April 14, 1972, retrocession of jurisdiction over the Port Madison Indian Reservation and the Suquamish Indian Tribe was accepted by the United States from the State of Washington, 37 F.R. 7353 (1972) (Attached hereto as Exhibit D). At the time of acceptance of the retroces-

sion by the United States, any irregularities in the state procedures requesting such retrocession became irrelevant. In *Omaha Tribe of Nebraska v. Walthill*, 335 F. Supp. 823 (D. Neb. 1971), *affirmed*, 460 F.2d 1327 (1972), *cert. denied*, 409 U.S. 1107 (1973), the court held that failure of Nebraska's legislature to present to the governor a resolution purporting to retrocede criminal jurisdiction, thus violating Nebraska law, had no effect whatsoever upon the legal validity of the retrocession where the retrocession was accepted by the Secretary of Interior in the appropriate manner. The court concluded that the State of Nebraska failed to follow its own legal procedures but that the important question was whether the state resolution was valid under federal law, not state law. The court concluded that the retrocession resolution was valid under federal law, pointing out that the Secretary of Interior was not authorized to investigate the procedural or technical validity of every notice he received:

> . . . [o]nce the Secretary received from the state officials what appeared to be an official act of the state offering a retrocession, he was entitled to rely thereon for purposes of the acceptance authorized by the federal statute.

334 F. Supp. at 832.

This analysis was reaffirmed in *United States v. Brown*, 334 F. Supp. 536 (D. Neb. 1971). That court came to the same conclusion as the court in *Omaha Tribe, supra*, citing *Leser v. Garnett*, 258 U.S. 130, 66 L. Ed. 505 (1922), in which the United States Supreme Court applied federal law to a determination of the effect of the invalidity under state law of the ratification by two state legislatures of the Nineteenth Amendment to the United States Constitution. In *Leser*, the Supreme Court held that once the Secretary was notified of ratifications by official notice, it was conclusive upon him, and, being certified to by his proclamation, it was conclusive upon the courts. The court in *Brown, supra*, noted that:

> The plenary power of the federal government over Indian affairs, the inescapable difficulty of requiring the Secretary to delve into the internal workings of the state government, and the reliance of the federal government upon what appeared to have been a valid state action, are all factors to be considered and lead the Court to the conclusion that the federal interpretation of the effectiveness of state action triggering the reassertion of federal jurisdiction is and was controlling.

334 F. Supp. at 541.

Thus the acceptance by the Secretary of Interior of the retrocession of jurisdiction over the Suquamish Indian Tribe of the Port Madison Indian Reservation was a determination by the federal government that the requirements of its laws had been met and retrocession therefore was accomplished, despite any possible invalidity of the governor's actions.

2.5 Validity of Arrest on Non-Trust Land for "Reckless Driving" on Trust Land.

Petitioner was charged in Suquamish Tribal Court with the offense of reckless driving in violation of the Suquamish Law and Order Code. If trial had been held in Suquamish Tribal Court, the Tribe would have attempted to prove that Petitioner drove recklessly in violation of Tribal law on South Street as described above. South Street is a dirt road located on Government Lot 3 which is held by the United States government in trust for the Suquamish Indian Tribe and was the subject of the litigation in *Oliphant, supra*. A copy of a letter and report by the Office of the Solicitor of the United States Department of Interior regarding the status of South Street is attached hereto as Exhibit E.

After pursuing Petitioner driving recklessly on South Street, the Tribal officer, in hot pursuit, arrested Petitioner two blocks away, off the Tribal trust land. Under the common law doctrine of "hot pursuit", the Tribal police officer had the right to pursue Petitioner directly off trust land after observing the commission of an offense on the trust land and to arrest Petitioner on Division Avenue. There is no question but that Division Avenue, where Petitioner was arrested, is within the exterior boundaries of the Port Madison Indian Reservation.

In addition, the Suquamish Tribal Court clearly has jurisdiction over Petitioner for the offense committed under the doctrine that when a person accused of an offense is held under valid process in the proper forum, such detention is not rendered invalid by the alleged illegality of the events which preceded, or which made the detention physically possible. 21 Am. Jur. 2d, *Criminal Law* §381. There is nothing in the Constitution, treaties, or laws of

the United States which exempts an offender from trial and punishment even though brought from another state in abuse of legal process. *Lascelles v. Georgia*, 148 U.S. 537.

Thus, even if it is held that for some reason Tribal police did not have the right to arrest Petitioner on Division Avenue, there is no question but that the Tribal Court has jurisdiction over Petitioner for an offense committed on trust land so long as Petitioner has appeared before the Tribal Court for a legitimate Tribal offense.

2.6 Validity of Jurisdiction Regarding "Destruction of Public Property".

Petitioner was charged with "destruction of public property" (Tribal property) because, after slowing his vehicle down, he intentionally rammed into the side of the Tribal police car, causing injury to Chief Big Man and great property damage to the Tribal vehicle. This damage was intentionally done to the Tribal vehicle by Petitioner while the Tribal vehicle was in pursuit of Petitioner after Petitioner committed the offense of reckless driving on South Street.

The incident occurred on a public road within the exterior boundaries of the Port Madison Indian Reservation and not on land owned by Petitioner. Neither the state nor county government expressed any interest in asserting its jurisdiction over Petitioner for any offense, thereby implying that only tribal interests were involved. As Judge Sharp found in *Oliphant*, (Memorandum Opinion at page 5), an Indian tribe always had the power to enact laws pertaining to non-Indians and to confer upon its Tribal courts the jurisdiction over the person of non-Indians unless such jurisdiction has been expressly limited by the acts of the United States government. Petitioner can point to no law and no decision of a court which holds that the United States government has taken from the Suquamish Indian Tribe jurisdiction over offenses committed within the exterior boundaries of the Port Madison Indian Reservation on non-trust land.

On January 21, 1975, the United States Supreme Court issued its decision in *United States v. Mazurie*, No. 73–1018. In that case, the Supreme court upheld the delegation by Congress to an Indian tribe of the power to regulate the sale of liquor within the boundaries of its reservation. The case involved a bar located on non-trust land

on the Wind River Reservation in Wyoming. The case points out that for purposes of determining jurisdiction over offenses occurring within "Indian country", there is no difference between trust and non-trust land. While that case concerned an express delegation of a power by Congress, the court commented extensively on the fact that Indian tribes have inherent powers over non-Indians within the exterior boundaries of their reservations, not dependent upon Congressional delegations of power:

> This Court has recognized limits on authority of Congress to delegate its legislative power. *Panama Refining Co. v. Ryan*, 203 U.S. 388 (1935). Those limitations are, however, less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319–322 (1936). Thus it is an important aspect of this case that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory, *Worcester v. Georgia*, 6 Pet. 515, 557 (1832); they are a 'separate people' possessing 'the power of regulating their internal and social relations. . . .' *United States v. Kagama*, 118 U.S. 375, 381–382 (1886); *McClanahan v. Arizona State Tax Comm'n.*, 411 U.S. 164, 173 (1973).
>
> Cases such as *Worcester*, *supra*, and *Kagama*, *supra*, surely establish the proposition that Indian tribes within 'Indian country' are a good deal more than 'private voluntary organizations,' and they thus undermine the rationale of the Court of Appeals' decision.

Ship Opinion at 12.

In *Mazurie*, the non-Indians involved complained, as does Petitioner, of the fact that they would be subject to Tribal jurisdiction while being unable to become members of the Tribe or to participate in Tribal government. The court rejected that argument, holding:

> The fact that the Mazuries could not become members of the tribe, and therefore could not participate in the tribal government, does not alter our conclusion. This claim, that because respondents are non-Indians Congress could not subject them to the authority of the Tribal Council with respect to the sale of liquor, is answered by the Court's opinion in *Williams v. Lee*, 358 U.S. 217 (1959). In holding that the authority of tribal courts could extend over non-Indians insofar as con-

cerned their transactions on a reservation with Indians, we stated:

> 'It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. [Citations omitted.] The cases in this Court have consistently guarded the authority of Indian governments over their reservations. Congress recognized this authority in the Navajos in the treaty of 1868, and has done so ever since. If this power is to be taken away from them, it is for Congress to do it. *Lone Wolf v. Hitchcock*, 187 U.S. 552, 564–566.'

358 U.S. at 223.

For the foregoing reasons the judgment of the Court of Appeals must be reversed, and the convictions of respondents reinstated.

Thus, within the last few weeks, the United States Supreme Court has clearly recognized and noted the legitimacy and validity of the exercise of jurisdiction by an Indian tribe over non-members on fee-patent, non-trust lands, within the exterior boundaries of the tribe's reservation. Considering the interest of the Suquamish Tribe in submitting to its Tribal Court a non-Indian who intentionally destroyed a Tribal police car which was pursuing him for violation of Tribal ordinances on Tribal lands, the jurisdiction of the Suquamish Tribal Court over this offense is clear.

Petitioner has argued that the State of Washington has assumed jurisdiction over non-trust lands within the exterior boundaries of Indian reservations, including the Port Madison Indian Reservation.

An analysis of the effect of Public Law 83–280 also shows that any jurisdiction assumed by the State of Washington must be concurrent with tribal jurisdiction. As held in *Oliphant*, jurisdiction as to offenses committed by or against Indians in Indian country was exclusively federal or tribal unless specifically and expressly limited by Congress. In Public Law 83–280, Congress was attempting to enable states to take over the burden of federal jurisdiction from the United States. Since the only jurisdiction the United States had was concurrent jurisdiction with the Tribe, the United States could not have given to the states greater jurisdiction than it had at that time, without specifically ending tribal jurisdiction also. There is nothing in the legislative history of Public Law 83–280 to suggest that the United States was attempting to give to the

states anything more than its half of the concurrent federal-tribal jurisdiction. The object was merely to relieve the federal courts and federal prosecutors of the burdens of law enforcement in Indian country. Certainly, anything so major as the divest of Indian tribes of concurrent jurisdiction over crimes committed on the reservation would have been explicitly dealt with in the legislation and widely discussed in the legislative history. This is particularly true in view of the well-established doctrines of law that all agreements, treaties, statutes, and laws are to be liberally construed to protect the rights of Indians with all ambiguities resolved in the Indians' favor. *Winters v. United States*, 207 U.S. 564 (1908); *Alaska Pacific Fisheries v. Untied States*, 248 U.S. 278 (1918).

2.7 Vacuum in Law Enforcement on Port Madison Reservation.

As a practical matter, jurisdiction of a tribal court over offenses committed by all persons within the exterior boundaries of the reservation is necessary for carrying out an effective law enforcement program on the reservation. The instant case clearly proves this point. The offenses allegedly committed by Petitioner occurred both on and off trust land within the Reservation. It is impossible without an official map to determine where the trust land and where the fee land begins. A request had been made of the local and county police to provide law enforcement assistance during the incident and no action was had on that request. Even when an officer of the Sheriff's Department and the State Patrol arrived on the scene, no law enforcement occurred, and, had the Tribe not asserted its jurisdiction, Petitioner would have gone unpunished.

Members of the Sheriff's Department pass quickly through the Port Madison Reservation two times during the day, once in the morning, and once at night. The Sheriff's Office is approximately forty miles away from the Reservation and thus, for all intents and purposes, without Tribal law enforcement, there is no continuing law enforcement within the boundaries of the Reservation.

Without the exercise of jurisdiction by the Tribe and its courts, there could have been no law enforcement whatsoever on the Reservation during this incident which clearly created a potentially dangerous situation with regard to law enforcement. Public safety is an underpinning

of a political entity. If tribal members cannot protect themselves from offenders, there will be powerful motivation for such tribal members to leave the reservation, thereby counteracting the express Congressional policy of improving the quality of reservation life.

Federal law is not designed to cover the range of conduct normally regulated by local governments. Minor offenses committed by non-Indians within Indian reservations frequently go unpunished and thus unregulated. Federal prosecutors are reluctant to institute federal proceedings against non-Indians for minor offenses in courts in which the dockets are already overcrowded, where litigation will involve burdensome travel to witnesses and investigative personnel, and where the case will most probably result in a small fine or perhaps a suspended sentence.

Prosecutors in counties adjoining Indian reservations are reluctant to prosecute non-Indians for minor offenses where limitations on state process within Indian country may make witnesses difficult to obtain, where the jurisdiction division between federal, state and tribal governments over the offense is not clear and where the peace and dignity of the government affected is not his own but that of the Indian tribe.

Traffic offenses, trespasses, violations of tribal hunting and fishing regulations, disorderly conduct and even petty larcenies and simple assaults committed by non-Indians go unpunished. The dignity of the tribal government suffers in the eyes of Indian and non-Indian alike, and a tendency toward lawless behavior necessarily follows. With the increased travel and involvement of non-Indians within Indian reservations, any impediment to complete tribal jurisdiction within its own territory is not tolerable.

CONCLUSION

Congress has not estinguished the governmental powers of the Suquamish Tribe to enact the local criminal laws under which Petitioner was charged. Moreover, neither the tribal law nor the manner of its enforcement by the Suquamish Tribe exceeds or conflicts with any limitation imposed upon the Tribe's governmental powers by the Indian Civil Rights Act of 1968. Therefore, the Suquamish

Tribe lawfully vested its tribal court with jurisdiction to enforce the Tribe's local criminal laws against a person committing an offense against the Tribe within the Tribe's territorial jurisdiction.

The factual analysis of this case, the legal analysis of the powers of the Suquamish Tribe, and a review of the policies of the federal government toward Indian tribes all point to the need for this Court to affirm the inherent right of the Suquamish Indian Tribe to maintain an orderly community by regulating the conduct of those who choose to enter it.

For these reasons, the Petition for a Writ of Habeas Corpus should be denied.

DATED this 31st day of January, 1975.

Respectfully submitted,
ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

/s/ _____
Barry B. Ernstaff, Council for
Suquamish Respondents.

**DISTRICT COURT—EXHIBIT A
TO RETURN OF SUQUAMISH
RESPONDENTS ON PETITION FOR WRIT OF
HABEAS CORPUS;
BUREAU OF INDIAN AFFAIRS INCIDENT
COMPLAINT REPORTS**

Filed June, 31, 1975

(Caption Omitted in Printing)

BUREAU OF INDIAN AFFAIRS

INCIDENT COMPLAINT REPORT

AGENCY W.W.A. RESERVATION Port Madison

Type of Incident or
Nature of Offense: Pursuit and Accident

Date and Time of Incident: October 11, 1974—11:45 P.M. to 1:35 A.M.

Location: Between Geneva and Fern Street

Reported by: Carl B. Bigman

Address: Box 353 Suquamish, Washington 98392

Received by _____ on _____
(Signature) (Date and Time)

Filed with Superior _____
(Show Date and Time)

Reviewed by _____ Date _____

Case Number _____ Reported to: _____
Date: _____

DETAILS OF INCIDENT AND ACTION TAKEN BY OFFICER:

October 11, 1974 at approximately 11:45 P.M. Officer Wayne P. DeCoteau picked me up at the Suquamish Tribal Law and Order Office and informed me that he had received a call from Officer Allen C. Jones on the radio that

Officer Jones was in need of assistance in pursuit of a 1973, Black, Ford Pick-up. (Lisence No. PC-5556) He said Officer Jones stated he had signaled the vehicle to stop by turning on his blue lights and siren; which the driver did not acknowledge. He stated the direction of the vehicle was heading North on South Street. As we proceeded north on South Street, we spotted vehicle speeding toward Augustine Street immensely exceeding the speed limit of 25 mph. As we approached the speeding vehicle, we signaled him to pull over by flashing our blue lights. Vehicle then sped up and swerved around the corner at the Teepee Tavern. At that point, we observed there were three (3) subjects in the vehicle (a driver and two (2) passengers), and were of the suspicion of a possible auto theft due to the unwillingness of the subjects to heed our warning signals.

We pursued vehicle to Geneva Street and he turned left going east on Second Street. Vehicle turned right on Center Street heading north. We continued to pursue vehicle on all streets of Suquamish for a period of one and one-half hours. We finally put a road-block between Cedar and Pine on Division Street at approximately 1:30 a.m. As the vehicle approached our road-block, he backed up on Pine Street and headed west on Division Street. We dispursed our road-block and resumed the pursuit.

At approximately 1:35 a.m. we came upon the vehicle between Geneva Street and Fern Street. Vehicle slowed down to almost a stop. I ordered Officer DeCoteau to overtake and block-off vehicle. We blocked the road about 20 feet in front of vehicle.

As I proceeded to open the door of the Police car, the vehicle sped up and rammed into the right door, where I was sitting. During the force of the impact I hit my head on the car door window and window shattered. Officer DeCoteau jumped out of the Police car and began chasing vehicle on foot. The driver of the vehicle backed up and attempted to try to get away. Still inside the Police car, I called out and ordered Officer DeCoteau to fire a warning shot to stop vehicle. Simultaneously as Officer DeCoteau fired the warning short, Officer Jones pulled behind the vehicle, blocking the road, and putting the vehicle to a halt.

I jumped out of the Police car and approached the vehicle. I pulled the driver out of the pick-up and ordered

Officer DeCoteau to replace his service revolver in his holster.

Subjects identified themselves as: 1) Driver, Dan Belgarde of Miller's Bay, whom the vehicle was registered under, 2) Brad Bray and 3) Mark Oliphant of Suquamish.

Officer DeCoteau gave them their rights and placed Dan Belgarde under arrest charging him with; 1) Wrecklessly Endangering Another Person, and 2) Injury to Public Property.

I called the County Sheriff's Office at approximately 1:50 a.m. and informed them of the incident and requested an investigation. At 2:20 a.m. Officer Phil Colcard arrived and called the State Patrol. Trooper Broome arrived and conducted an investigation and made out an accident report.

Officer DeCoteau and Officer Jones took custody of Dan Belgarde and transported him to Port Angeles City Jail, which is contracted as the holding facility for the Suquamish Indian Tribe.

I was taken to Harrison Memorial Hospital in Bremerton, Washington, by Galvas Cozar, Jr., Part-time Suquamish Tribal Deputy, where I was treated by Dr. Bethel and Dr. V.E. Bryan, Jr., Nevro Surgeon and Neurology, who treated me for severe whiplash and possible head injury.

BUREAU OF INDIAN AFFAIRS

INCIDENT COMPLAINT REPORT

AGENCY WWA Reservation Port Madison

Type of Incident or
Nature of Offense: Pursuit

Date and Time of Indicent: October 11, 1974–11:40 p.m.

Location: South Street, Suquamish, Washington

Reported by: _____
Address: _____

Received by: Officer Alan C. Jones
on 10/11/74 — 11:45 p.m.

Filed with Superior _____
(show date and time)

Reviewed by _____ Date _____
Reviewed by _____ Date _____
Reviewed by _____ Date _____

Case Number Reported to:
Date: _____

DETAILS OF INCIDENT AND ACTION TAKEN BY OFFICER:

About 11:40 p.m. I observed a 1973, black, ford, pick-up wrecklessly driving on South Street and immensely exceeding the speed limit (25 mph); approached the vehicle from behind and signaled him to pull over by turning on the flashing blue lights. At that point the vehicle sped up and threw gravel on the patrol car. At 11:45 p.m. I called for assistance and explained reasoning for pursuit, make, model, Lisence No. (PC5556), and direction (heading north on South Street in Suquamish). Officer Wayne DeCoteau and Captain Carl Big Man took over pursuit.

Original: Office records
Copy: Agency Special Officer
Copy (Federals only): Area Special Officer

DISTRICT COURT—REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE

Filed Aug. 1, 1975

(Caption Omitted in Printing)

INTRODUCTION

This Petition for a Writ of Habeas Corpus challenges the jurisdiction of the Suquamish Tribal Court to prosecute petitioner for two alleged offenses on the Port Madison Indian Reservation. The Court ordered respondents to show cause, before me, why the Petition should not be granted. Also pending is a motion to dismiss filed by respondent Secretary of the Interior. All parties have appeared by counsel, and the case has been fully briefed and argued.

FACTUAL BACKGROUND

Petitioner, a non-Indian * twenty-one years of age, was driving his pick-up truck, with two passengers, in Suquamish, Washington, in the early morning hours of Saturday, October 12, 1974. Suquamish is located wholly within the boundaries of the Port Madison Indian Reservation. According to the reports of tribal police officers, petitioner was driving recklessly and at high speed on the streets of Suquamish for several hours, pursued by tribal police vehicles. Eventually, two of those vehicles blocked petitioner's path, and he collided with the side of one of the police vehicles. Precisely what ensued thereafter is in dispute; but it is agreed that a tribal police officer fired one shot, without injury or damage; and thereafter petitioner submitted to arrest and his two passengers were released.

The tribal police officers then called the Kitsap County Sheriff's Office, and an officer of the Sheriff's Office and a State Patrolman arrived at the scene and conducted an in-

* Respondents claim petitioner has some Indian blood, but there is no claim he is a member of the Suquamish or any other tribe. This factual dispute appears to have no bearing upon the issues presented by the petition, however.

vestigation. Both declined to take any action against petitioner.

Petitioner was then transported to the Port angeles City Jail, which contracts as the holding facility for the Suquamish Indian Tribal Court. He posted bail and was released by Cecelia M. Hawk, a Judge of the Suquamish Tribal Court, at 1:30 p.m. on the same day. He appeared for arraignment with his attorney before Grace Duggan, also a Judge of the Suquamish Tribal Court, on October 18, 1974. His attorney indicated this habeas corpus action would be commenced, and further prosecution was therefore held in abeyance.

Petitioner is charged with reckless driving and destruction of tribal property under the Suquamish Tribal Law and Order Code. The reckless driving allegedly occurred on South Street in Suquamish, which is a dirt road maintained by Kitsap County. Petitioner denies he was at any time driving on South Street. The road block, collision and arrest of the defendant all occurred on Division Street in Suquamish, which is a state highway but within the reservation. The charge of destruction of tribal property relates to the allegation that petitioner intentionally rammed the tribal police car.

SUMMARY OF PETITION

This Court has jurisdiction over the petition under 25 U.S.C. §1303 and perhaps also under 28 U.S.C. §2241(c)(3). Petitioner has named, as parties respondent, Rogers C.B. Morton, Secretary of the Interior of the United States; the Suquamish Indian Tribe; Cecelia M. Hawk, Judge, Suquamish Tribal Court; and Grace Duggan, Judge, Suquamish Tribal Court.

The sixteen page petition presents a welter of allegations and contentions. Those which relate peculiariy to Secretary Morton are discussed in the following section of this Report and Recommendation. Petitioner's contentions as to the other respondents are essentially as follows.

Challenges to Jurisdiction. (1) Only the State of Washington, and not the Tribal Court, has jurisdiction over offenses by non-Indians on the Port Madison Indian Reservation.

(2) The Suquamish Tribe, and therefore its police officers, have no jurisdiction over violations committed on a

state highway within the reservation, regardless of what their authority might be as to the other portions of the reservation.

Procedural Due Process Contentions. (3) Petitioner did not and could not participate in promulgation of the Suquamish Tribal Law and Order Code, and therefore cannot be bound thereby. (4) The Law and Order Code is not published, and petitioner had no notice of its provisions. (5) Tribal police, tribal courts and the laws involved in this case are not authorized by the Suquamish Tribal constitution. (6) Petitioner was not timely advised of the charges against him and of his constitutional rights. (7) The courtroom and facilities of the Susquamish Tribal Court are not adequate for fair, open and public trial. (8) Grace Duggan, Suquamish Tribal Judge, has little knowledge of the law. (9) The Tribal Court illegally restricts the right of petitioner's attorney to practice before the tribal court. (10) Petitioner will not receive a fair trial because all the judges and potential jurors are Indians. (11) The Laws and Orders of the Suquamish Indian Tribe applied in this case violate the Indian Civil Rights Act, 25 U.S.C. §1302.

Miscellaneous Contentions. (12) The Indian Tribal Police prevented the State police and the County Sheriff from enforcing the law. (13) The tribe assesses different penalties than does the State of Washington.

DISMISSAL OF SECRETARY OF INTERIOR

The petition asserts that the Secretary of the Interior, acting through officers of the Bureau of Indian Affairs, has made contracts, and has supplied funds, property, facilities and training in support of the tribal law enforcement program. One of those contracts was with the City of Port Angeles for holding prisoners in custody for the Suquamish Tribe. Petitioner asserts he was held in the City of Port Angeles Jail for a number of hours on October 12, 1974 pursuant to the terms of that contract.

The Secretary of the Interior has moved for dismissal as a party respondent on grounds that he does not have custody of petitioner, and has no power to order petitioner's release should this court require it. Petitioner responds that the Secretary must be included as a party respondent to accord complete relief to the petitioner.

It is axiomatic that a petitioner for a writ of habeas corpus can only properly be brought against a person having custody of petitioner. There is no sense in which the Secretary of the Interior can so be regarded at this time. The motion to dismiss the Secretary of the Interior should be granted.

I note, in passing, that in *Mark David Oliphant v. Edward Schlie, Chief of Police of the City of Bremerton, et al.*, Case No. 511-73C2 in this court (now pending on appeal), respondent Schlie was dismissed at an early stage of the proceeding because he no longer had custody or control over the petitioner. While the Secretary of the Interior stands in a somewhat different position, for the reasons stated by petitioner, nevertheless the controlling fact is the same: the Secretary of the Interior has neither custody or control over petitioner.

ISSUES RESOLVED IN OLIPHANT CASE

Many of the issues raised in this case were presented in the *Oliphant* Case, and were resolved by this court in its Memorandum Opinion.*

Both cases involve arrests of a non-Indian by the Suquamish Tribal Police for offenses allegedly committed within the exterior boundaries of the Port Madison Indian Reservation. All of the respondents in this case (except for the Secretary of the Interior) were respondents in the *Oliphant* case. The same counsel represents both petitioners. Ironically, Mr. Oliphant was a passenger in the truck at the time of Mr. Belgarde's arrest.

Although the *Oliphant* decision is now on appeal, and although petitioner in this case was not a party in *Oliphant*, nevertheless the rulings in that case on issues of law establish binding precedent for this district.

The relevant holdings in *Oliphant* may be summarized as follows. The Suquamish Indian Tribe is duly organized as a local governmental body on the Port Madison Indian Reservation. As such, it has *retained certain inherent sovereign powers*, and has established a valid justice and law enforcement program by enacting an approved law and order code and establishing a police system and tribal

*A copy of the *Oliphant* Memorandum Opinion is contained in the court file in this case as Exhibit C to document 11, the "Return of Suquamish Respondents on Petition for Writ of Habeas Corpus."

court. ". . . the Suquamish tribe may exercise its powers of local government over a non-Indian who enters within the tribe's territorial jurisdiction and commits an offense defined as a crime by its local tribal laws unless Congress has expressly extinguished the tribe's original inherent powers of self-government with respect to such a crime. Although the act of petitioner may constitute a federal crime under the general criminal laws of the United States, the same acts may also constitute a tribal crime under the local laws of the Suquamish Indian Tribe for which the offender may be lawfully prosecuted and punished by the Suquamish tribal court. In the present case, the United States has chosen not to exert its jurisdiction and the tribe has asserted its share of the concurrent jurisdiction of the tribe and the United States." (Memorandum Opinion in *Oliphant*, Pages 5-6).

The court found that the only limits that Congress had placed upon the jurisdiction of the tribal court were: (1) A tribe may not enact local laws which conflict directly with federal laws applicable in Indian country; (2) The criminal jurisdiction of tribal courts is limitd to offenses with a maximum penalty of not more than 6 months imprisonment or a fine of five hundred dollars or both for any one offense; (3) Persons subject to tribal jurisdiction, whether Indians or non-Indians, are entitled to certain protections under the Indian Civil Rights Act of 1968, 25 U.S.C. §1302.

With the foregoing as a foundation, we can now examine the respects in which this case presents issues not resolved in *Oliphant*.

JURISDICTION OF TRIBAL COURT

1. *State Highway v. Trust Land*. The essential factual distinction between this case and *Oliphant* is that, in *Oliphant*, the alleged offenses occurred on land held in trust by the United States Government for the benefit of Indians. In this case, the alleged offenses occured on a county road and on a state highway within the boundaries of the reservation, and the arrest was made on the state highway. This court in *Oliphant* expressly reserved the question of whether such facts would make a jurisdictional difference.

Since the decision in *Oliphant*, the U.S. Court of Appeals for the Ninth Circuit has decided a case which involved the issue of the power of a tribal officer to make an arrest on a state highway running through an Indian reservation. In *Ortiz-Barraza v. United States*, 512 F. 2d 1176 (9th Cir., 1975), a tribal police officer stopped defendant, a non-Indian, on a public highway on the Papago Indian Reservation in Arizona. During a search which the court held to be reasonable, the tribal officer located marijuana. Defendant was convicted in the U.S. District Court for importation and possession of marijuana with intent to distribute. In response to one of the contentions made by defendant in that case, the court held:

> ". . . the fact that the events of interest here may have occurred within the right-of-way for a state highway vails the defendant nothing. Rights of way running through a reservation remain part of the reservation and within the territorial jurisdiction of the tribal police. *See, Gourneau v. Smith*, 207 N. W. 2d. 256 (N. Dak., 1973); 18 U.S.C. §1151 (1970)" (512 F. 2d at 1180).

It is true that *Ortiz-Barraza* does not specifically hold a tribal court may prosecute a non-Indian for offenses against the tribal code committed on a state highway running through the reservation. That case involved a prosecution under federal law, not tribal law. But the significant point is that the court held the territorial jurisdiction of the tribe and of its police, was the same on a state highway as on the balance of the reservation.

On the strength of the *Ortiz-Barraza* decision, and the authorities there cited, and in the absence of any contrary authority, I recommend this court find the Suquamish Tribal Court has jurisdiction over offenses against the tribal code committed on state highways running through the reservation.

2. *Federal or State Jurisdiction*. The parties have also thoroughly briefed and argued the issue of whether, in light of the very complex sequence of federal and state legislation, the United States or the State of Washington now has jurisdiction over criminal offenses committed on the Port Madison Indian Reservation. This Court in *Oliphant* clearly was of the view that the United States, not the State of Washington, had concurrent jurisdiction with the tribe. But it is not clear from the records currently in this court whether the same contentions were presented in that case. They are not mentioned in the Memorandum Opinion,

although they do appear in the *Oliphant* appeal briefs.

In any event, briefly summarized, the issues are as follows. In the Trade and Intercourse Act, 18 U.S.C. §1152, Congress in 1875 provided (with exceptions not directly relevant): "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian county."

In a series of steps beginning with a Congressional enactment on August, 1953, and culminating in a proclamation by Governor Rosellini in 1958, federal jurisdiction over offenses committed on the Port Madison Indian Reservation was transferred to the State of Washington.

Respondents assert that, thereafter, pursuant to federal and state legislation and a proclamation by Governor Evans in 1971, state jurisdiction was retroceded from the State of Washington back to the federal government. The parties have briefed and argued in detail the complex legal issues as to both the scope of the retrocession and its legal validity.

But in my view, those issues are wide of the mark in this case, because I conclude the Suquamish Tribe at all times retained *concurrent* jurisdiction over offenses committed on the reservation. In view of that conclusion, it matters little whether the other half of the concurrent jurisdiction is in the United States or in the State of Washington; and the complex issues surrounding that question are inappropriate for resolution in this case.

This court held in *Oliphant*, of course, that the tribe had concurrent jurisdiction over offenses committed on trust lands within the reservation. As noted, this holding was based upon authorities holding that the tribe had inherent sovereign power unless expressly deprived of it by federal statute or treaty.

Petitioner contends that the Trade and Intercourse Act (18 U.S.C. §1152) conferred *exclusive* jurisdiction upon the federal courts, and deprived the tribal courts of any jurisdiction. But petitioner cites no authority to support that proposition. In addition, it is directly contrary to the development, and recognized authority, of tribal courts. Indeed, it is contradicted at least in part by the language of the section itself, which clearly contemplates that an Indian

committing an offense in the Indian country might be punished by the local law of the tribe.

Petitioner next asserts that Public Law 83-280*, in authorizing under some circumstances the transfer of federal jurisdiction to the states, contemplated that such states would have exclusive jurisdiction. But there is nothing in the language of Public Law 83-280 to suggest that Congress was transferring *exclusive* jurisdiction; nor has petitioner cited authority for that proposition.

For the foregoing reasons, I conclude that Congress has never expressly deprived the Suquamish Indian Tribe of its concurrent jurisdiction over offenses committed on the Port Madison Indian Reservation; and this court should reaffirm its holding in *Oliphant* in that respect.

PROCEDURAL DUE PROCESS CONTENTIONS

Petitioner asserts he has been denied procedural due process in a number of respects. Some of these, if established by sufficient evidence, would constitute violations of the Indian Civil Rights Act (25 U.S.C. §1302) and might entitle petitioner to habeas corpus relief under 25 U.S.C. §1303. Specifically, from the contentions listed at the beginning of this Report and Recommendation, the five which fall into this category are:

(4) The Law and Order Code is not published, and petitioner had no notice of its provisions.

(7) The courtroom and facilities of the Suquamish Tribal Court are not adequate for fair, open and public trial.

(8) Grace Duggan, Suquamish Tribal Judge, has little knowledge of the law.

(9) The Tribal Court illegally restricts the right of petitioner's attorney to practice before the tribal court.

(10) Petitioner will not receive a fair trial because all the judges and potential jurors are Indians.

All these relate to the guaranty in §1302(6) of a public trial and of the right to the assistance of counsel, and the guaranty in Section 1302(8) of the right to due process of law.

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*Public Law 83-280 is not, to my knowledge, currently contained in the U. S. Code; but its language appears on page 2 of Attorney General Opinion 1972 No. 9, which is Exhibit H, to document 13.

Procedural Challenges Should Only Be Considered After Trial. It is my recommendation, however, that it is premature for this court to proceed with an evidentiary hearing on these claims at this time. Several of them cannot, as a practical matter, be resolved until after petitioner has been tried. How can this court pass upon the adequacy of the courtroom until the trial has been conducted? How can this court determine at this stage whether counsel will be unfairly restricted from participating in the trial? And it hardly seems appropriate to try the trial judge and jury before the trial of the defendant. Finally, of course, there is the possibility that petitioner might be acquitted.

Petitioner Should Be Required To Exhaust Tribal Remedies. Petitioner should not only be required to complete his trial before the tribal court. In addition, before pursuing his petition for habeas corpus relief in this court, he should be required either to exhaust his remedies before the tribal courts, or to demonstrate to the satisfaction of this court that there are no meaningful tribal court remedies.

The requirements for exhaustion of remedies in a habeas corpus challenge to the jurisdiction of a tribal court does not have the clear statutory foundation that this requirement enjoys in cases involving challenges to actions by state courts. But in *U. S. ex rel. Cobell v. Cobell, et al.*, 503 F. 2d 790 (9th Cir., 1974), cert. denied., ——— U.S. ———. (1975, the Court of Appeals for this circuit gave qualified recognition to, ". . . the exhaustion principle in the tribal context . . ." (503 F. 2d at 793).

Cobell involved a child and custody struggle between an Indian couple, and a jurisdictional struggle between the state courts in Montana and the tribal courts. The courts entered conflicting custody orders, and the father sought habeas corpus relief in a third court system, the United States District Court. The Ninth Circuit agreed that generally an applicant for habeas corpus relief under 25 U.S.C. §1303 must first exhaust his tribal remedies, and approved the reasoning in *Dodge v. Nakai*, 298 F. Supp. 17 (D. Ariz., 1968), and in *O'Neal v. Cheyenne River Sioux Tribe*, 482 F. 2d 1140 (8th Cir., 1973). The court also cited *McCurdy v. Steele*, 353 F. Supp. 629 (D. Utah, 1973).

In *Cobell*, *Dodge* and *McCurdy*, however, the courts approved the exhaustion requirement as a general matter, but found that under the particular facts of each case exhaustion of remedies should not be required. In *Cobell* and *McCurdy*, the courts found that there were no meaningful remedies in the tribal courts. In *Dodge*, the court noted that exhaustion of remedies would result in an undesirable multiplicity of actions.

In *O'Neal*, however, while agreeing that the exhaustion requirement was not inflexible, the court found that there was no good reason not to require exhaustion of remedies, and dismissed the action.*

In the case at bar, there are many good reasons for requiring exhaustion of remedies, and no reasons against it have been presented. The basic rationale for requiring exhaustion of tribal remedies was set forth in *Dodge v. Nakai* and quoted with approval in *Cobell*:

> "First, this interpretation [reading an exhaustion requirement into the act] would reconcile the statute with 'a strong Congressional policy to vest Navajo Tribal Government with responsibility for their own affairs.' . . . Second, this interpretation would place primary responsibility for the vindication of rights violated by Indian governmental agencies upon the tribal courts. Such responsibility may well enhance the development of an independent Indian judiciary, thus reconciling the statute with recognized federal policy. . . . Third, this interpretation would insure that this Court would intervene only in those instances in which local conflicts cannot be resolved locally. . . ." (503 F. 2d at 793).

Petitioner, of course, should be afforded the opportunity to demonstrate to this court, once the trial has been completed, that there are no meaningful tribal remedies, or that there is some other compelling reason why these issues should be adjudicated immediately in this court.

But in the absence of such a showing, it is my recommendation that this court decline to proceed on the above five contentions until the trial has been completed and petitioner has exhausted his tribal remedies with respect thereto.

OTHER CONTENTIONS WITHOUT MERIT

The other six contentions advanced by petitioner are without merit. Specifically, these include the ones num-

*Although *O'Neal* was not a habeas corpus case, it was based upon alleged violations of the Indian Bill of Rights.

bered 3, 5, 6, 11, 12, and 13 in the list above.

Petitioner contends he did not and could not participate in the promulgation of the Suquamish Tribal Law and Order Code, and therefore cannot be bound thereby. This contention was implicitly, if not expressly, rejected in *Oliphant*. In addition, the Supreme Court considered and rejected a similar contention in *U. S. v. Mazurie*, 419 U.S. 544, 557-8 (1975).

The contention that the Suquamish Tribal Constitution does not support the jurisdiction of the Suquamish tribal courts and its police officers is foreclosed by the holding to the contrary in *Oliphant*.

Petitioner asserts he was not timely advised of the charges against him and of his constitutional rights. But there is apparently no question, at least as of now, as to what the two specific charges against him are; and he has made no allegations of how he was prejudiced by any delay in advising him of those charges. Similarly, as to advice of his constitutional rights, there is no allegation of prejudice, such as the taking of incriminating statements during the time he was in custody. The allegations alone are insufficient to support any claim for habeas corpus relief.

Petitioner has included an "umbrella" claim that the laws and orders of the Suquamish Indian Tribe applied in this case violate the Indian Civil Rights Act. But this does not seem to add any new allegations to the more specific allegations already discussed.

Petitioner asserts that the Indian Tribal Police prevented the State Police and the Kitsap County Sheriff from enforcing the law. No facts of any kind are alleged in support of this contention. Indeed, respondents allege, and petitioner has not denied, that the state and county officers were given "first crack" at this case, but declined to take any action. Petitioner's contention in this respect is frivolous.

Finally, petitioner asserts that the tribe assesses different penalties for conduct on state highways within the reservation than those which apply to "a white citizen of the State of Washington when on a public highway. . . ." (Petition, page 12). By this allegation, petitioner attempts to assert a claim under the Fourteenth Amendment and 42 U.S.C. §1981. His contention in this regard is without merit, however. If the conclusion is correct that the tribe has independent jurisdiction over non-Indians on public highways within the reservation, there is no denial of equal

protection. Petitioner, of course, is not in any respect being denied the rights of a "white citizen".

SUMMARY

Based upon the foregoing, I recommend this court take the following action:

(1) find that the Suquamish Tribal Court has jurisdiction over petitioner and the two offenses charged against him;
(2) dismiss the petition for a writ of habeas corpus; and
(3) provide in the order of dismissal that it shall be without prejudice to the right of petitioner to re-assert the contentions numbered 4, 7, 8, 9 and 10 above, once the trial is completed, and conditioned upon exhaustion of all tribal remedies or upon a showing that there are no meaningful tribal remedies.

DATED this 1st day of August, 1975.

John L. Weinberg
U.S. Magistrate

DISTRICT COURT—ORDER DENYING WRIT OF HABEAS CORPUS

Filed Aug. 18, 1975

(Caption Omitted in Printing)

THIS MATTER having come on for hearing before the undersigned Judge upon the application of Petitioner for a Writ of Habeas Corpus, the Court having referred this matter for a report and recommendation to the United States Magistrate pursuant to 28 U.S.C., Sec. 636 and Local Rule M.R. 28, Petitioner appearing by and through his attorney, Philip T. Malone, Respondents Suquamish Indian Tribe, Cecilia M. Hawk, and Grace Duggan having appeared by and through their attorneys, Ziontz, Pirtle, Morisset, Ernstoff & Chestnut, Respondent Rogers C.B. Morton having appeared by and through his attorneys, the Department of Justice and Stan Pitkin, United States Attorney, the Magistrate having issued his report and recommendation, the Court having heard further argument from counsel at the hearing on August 15, 1975, and being fully advised, it is hereby

ORDERED that;

1. The report and recommendation of the Magistrate is adopted in full as issued on August 1, 1975.

2. The Suquamish Tribal Court has jurisdiction over Petitioner and the two offenses charged against him.

3. The Secretary of Interior is dismissed from this action as he was not a person having custodyof Petitioner.

4. The Petition for a Writ of Habeas Corpus is denied, and this action is dismissed without prejudice to the right of Petitioner to reassert the contentions numbered 4, 7, 8, 9, and 10 listed in the Magistrate's report and recommendation on page 11, once the trial is completed, and conditioned upon exhaustion of all tribal remedies or upon a showing that there are no meaningful tribal remedies.

DONE IN OPEN COURT this 18th day of August, 1975.

U.S. District Judge

Presented by:

ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT

Barry D. Ernstoff, of Attorneys
for Suquamish Respondents

Approved and Notice of Presentation Waived by:

Stan Pitkin, U.S. Attorney

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of Attorneys for Respondent Morton

Approved as to form and
Notice of Presentation waived:

Philip T. Malone, of Attorneys
for Petitioner

DISTRICT COURT—JUDGMENT DENYING WRIT OF HABEAS CORPUS

Filed Aug. 22, 1975

(Caption Omitted in Printing)

This action came on for trial (hearing) before the Court, Honorable Morell E. Sharp, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the petiton for a writ of habeas corpus is DENIED, and this action is DISMISSED without prejudice to the right of petitioner to reassert the contentions numbered 4, 7, 8, 9, and 10 listed in the Magistrate's Report and Recommendation on page 11, once the trial is completed, and conditioned upon exhaustion of all tribal remedies or upon a showing that there are no meaningful tribal remedies.

Dated at Seattle, Washington, this 22nd day of August, 1975.

Betty Fleming
Deputy Clerk of Court

DISTRICT COURT—NOTICE OF APPEAL

Filed Sept. 4, 1975

(Caption Omitted in Printing)

NOTICE IS HEREBY GIVEN that DANIEL B. BELGARDE, Petitioner above-named, hereby appeals to the United States Court of Appeals for the 9th Circuit from the Judgement entered in this action on the 22nd day of August, 1975 denying the issuance of a Writ of Habeas Corpus as petitioned for herein.

PHILIP P. MALONE,
Attorney for Petitioner

**NINTH CIRCUIT COURT OF APPEALS—
STIPULATION FOR ORDER HOLDING APPEAL IN ABEYANCE**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL B. BELGARDE, *Petitioner-Appellate,* *vs.* SUQUAMISH INDIAN TRIBE; CECELIA M. HAWK, Judge, Suquamish Tribal Court; and GRACE DUGGAN, Judge, Suquamish Tribal Court, Respondents-Appellees.	NO. 75-3319 STIPULATION FOR ORDER HOLDING APPEAL IN ABEYANCE

Appellant, DANIEL B. BELGARDE, by and through his attorney, Phillip P. Malone, and Appellees, SUQUAMISH INDIAN TRIBE, CECELIA M. HAWK, and GRACE DUGGAN, by and through their attorneys, Ziontz, Pirtle, Morisset, Ernstoff & Chestnut, hereby stipulate and agree as follows:

I.

In view of the fact that Rogers C. B. Morton has been dismissed as a party in this action, and that Order of Dismissal was not appealed from, the official name of this case in the Ninth Circuit Court of Appeals should be *Daniel B. Belgarde v. Suquamish Indian Tribe, et al.*

II.

This Court should enter an order holding the appeal in this action in abeyance, including the briefing schedule, pending the entry of an opinion in the case of *Oliphant v. Schlie*, No. 74-2154, now being considered by this Court. Oral argument in *Oliphant* took place on October 17, 1975. The Report and Recommendation of the Magistrate adopted by the District Court below (R.—119; R.—135), and the District Court's decision in this action relied on the earlier decision in *Oliphant*. The two cases are closely related in that *Oliphant* dealt with jurisdiction of the Suquamish Indian Tribe over an offense committed by a non-Indian on trust land within the boundaries of the Port Madison Indian Reservation and this action deals with the same occurrence but on fee patent land within the exterior boundaries of the same reservation. Thus a decision by this Court in *Oliphant* would have a direct effect on the legal arguments and positions being set forth in the present case. Counsel for both sides are the same in both *Oliphant* and the present case. A decision by this Court in *Oliphant* either affirming or reversing the District Court, would probably affect the desire of one party or the other to continue with the appeal in this case. The ends of justice would therefore best be met by allowing the briefing schedule in this case to begin running from the date of the entry of an opinion in *Oliphant v. Schlie*.

DATED this 14th day of November, 1975.

Philip P. Malone of
Attorneys for Appellant

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

Barry D. Ernstoff of
Attorneys for Appellees

NINTH CIRCUIT COURT OF APPEALS—ORDER HOLDING APPEAL IN ABEYANCE PENDING COURT'S DECISION IN OLIPHANT vs. SCHLIE, COURT OF APPEALS CAUSE NO. 74-2174

Filed Jan. 5, 1976

(Caption Omitted in Printing)

Before: ELY and GOODWIN, Circuit Judges

Upon due consideration of appellant's motion for the appeal to be held in abeyance, all further proceedings in this appeal shall be held in abeyance pending this Court's decision in case number 74-2154, *Oliphant v. Schlie*.

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Mo Cal 1/5/76 U.S. Circuit Judges

In the Supreme Court of the United States

No. 76-5729

MARK DAVID OLIPHANT,
Petitioner,

v.

THE SUQUAMISH INDIAN TRIBE, et al.; and
DANIEL B. BELGARDE,
Petitioner.

v.

THE SUQUAMISH INDIAN TRIBE, et al.

ON PETITION FOR WRIT OF CERTIORARI TO the United States Court of Appeals for the Ninth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

June 13, 1977